159 U.S. 500

TRANSCRIPT OF RECORD.

159-500

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~335~~. 36

GEORGE W. PATTON, CHARLES J. BIGLEY, AND MASON M. CULVER, COPARTNERS TRADING AS GEORGE W. PATTON & COMPANY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JULY 15, 1891.

(14,741.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 227.

GEORGE W. PATTON, CHARLES J. BIGLEY, AND MASON M. CULVER, COPARTNERS TRADING AS GEORGE W. PATTON & COMPANY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original.	Print.
Writ of error to circuit court	1	1
Citation	2	1
Caption	3	2
Writ of error to district court	5	2
Citation	8	3
Transcript from district court	10	4
Caption	10	4
Summons	11	4
Marshal's return	12	4
Plaintiff's statement of demand	14	5
Affidavit of defense	19	7
Plea of defendants	20	8
Order calling jury, &c	21	8
Agreement as to special finding	22	8
Verdict	23	8
Motion for new trial	24	9

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	Original.	Print.
Order overruling motion for new trial	30	11
Judgment	30	11
Bill of exceptions	32	12
Evidence for plaintiff	33	12
Testimony of Jay C. Cummings	33	12
Depositions taken in England, &c	37	15
Deposition of Charles P. G. Patterson	41	16
Thomas Henry Isherwood	44	18
Thomas Henry Isherwood (recalled)	45	18
Joseph Knowles	56	23
Maximilian Delius	75	33
Charles Edward Richards	89	41
George Wm. Lupton	96	44
Richard Bouley Nicholls	119	57
Thomas Leavens Renton	128	62
Carl Hermann Holzhaussen	138	67
Frederick Whitaker	145	71
James Lord Bowes	149	73
Arthur Wilson Ronald	163	81
John William Turner	171	85
Exhibit A—Invoice and declaration	185	92
B—Advice of Goods	188	94
C—Letter of Hughes & Isherwood to Patton & Co., October 13, 1890	189	95
D—Letter of Hughes & Isherwood to Firth & Co., October 13, 1890	189	96
E—Account of Hughes & Isherwood with Firth & Co	190	96
Consul's certificate	191	97
Testimony of Theodore C. Search	192	97
Theodore Justice	200	101
Benjamin Firth	207	105
Thomas A. Campbell	211	107
Mitchell Stead	213	108
Robert N. Kitching	216	109
Francis H. Taggart	218	110
Thomas Scott	220	111
Richard Champion	224	114
Nathan Folwell	229	116
John T. Bottomly	232	118
Wm. H. Grundy	238	121
Evidence for defendants	242	123
Testimony of George W. Patton	242	123
James Dobson	263	134
Joseph P. Truitt	277	142
Rudolph C. Binder	285	146
Emile Scheppers	293	150
W. H. McCallum	295	151
Gustave Daws	299	154
Charles J. Webb	300	154
M. H. Chadwick	307	158
Sevil Scofield	310	159
George Campbell	315	162

	Original.	Print.
Testimony of James W. Tatterstield	321	165
John J. Collins	325	168
Rudolph C. Binder (recalled)	329	170
Agreement as to special finding	330	170
Charge of the court	330	170
Defendants' points	337	173
Defendants' exceptions to charge	338	174
Judge's certificate to bill of exceptions	342	176
Assignment of errors	343	176
Bond	348	178
Clerk's certificate	350	179
Stipulation as to hearing	352	179
Hearing	353	180
Judgment	354	180
Order fixing amount of bond	355	180
Assignment of errors	356	181
Bond	362	183
Clerk's certificate	364	184

1 UNITED STATES, } *sct:*
Eastern District of Pennsylvania, }

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between George W. Patton, Charles J. Bigley, and Mason M. Culver, copartners trading as George W. Patton and Company, plaintiffs in error, and The United States of America, defendants in error, a manifest error has intervened to the great damage of the said George W. Patton, Charles J. Bigley, and Mason M. Culver, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., within thirty days, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 25th day of June, A. D. one thousand eight hundred and ninety-one, and in the one hundred and fifteenth year of the Independence of the said United States.

Seal U. S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of Circuit Court U. S.

Approved:
M. W. ACHESON, *Cir. Judge.*

2 THE UNITED STATES OF AMERICA, *ss:*

To the United States of America, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein George W. Patton, Charles J. Bigley, and Mason M. Culver, copartners trading as George W. Patton and Company, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 25th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

M. W. ACHESON, *Cir. Judge.*

Service accepted.

JOHN R. READ,
U. S. Att'y, for Def't in Error.

3 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

GEORGE W. PATTON, CHARLES J. BIGLEY, and Mason M. Culver, Copartners Trading as George W. Patton and Company, Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA, Defendant in Error.
} No. 1. October Session, 1891.

UNITED STATES OF AMERICA, *District of Pennsylvania,* } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1891. No. 1.

It is thus contained:

Be it remembered that on the fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-one,
4 George W. Patton, Charles J. Begley and Mason M. Culver, copartners trading as George W. Patton and Company, by their attorney, John G. Johnson, Esquire, comes into court here and sues forth a writ of error to the district court of the United States in and for the eastern district of Pennsylvania against the United States of America, which, with the endorsement, is in the words and figures following, to wit:

5 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of the judgment in a suit before you between The United States of America, plaintiff, and George W. Patton, Charles J. Bigley, and Mason M. Culver, trading as George W. Patton and Company, defendants, in a plea of assumpsit, a manifest error has intervened to the great damage of the said George W. Patton, Charles J. Bigley, and Mason W. Culver, trading, &c., as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner and that full and speedy justice should be done to the parties aforesaid in this behalf—

6 You are hereby commanded that, if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, sitting at Philadelphia, on the first Monday of October next (1891), that, the record and process aforesaid being inspected, they may cause to be done what of right ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Philadelphia, this 15th day of June, A. D.
[SEAL.] 1891, and in the one hundred and fifteenth year of the Independence of the said United States.

SAMUEL BELL,
Clerk Circuit Court U. S.

7 Endorsed: No. 1. October sess., 1891. George W. Patton *et al.*, plaintiffs in error, *vs.* The United States of America, defendant in error. Writ of error to district court United States. 1891, June 17—Brought into the clerk's office by the defendants George W. Patton *et al.*, plaintiff- in error.

8 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Pennsylvania, }

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, to be holden at Philadelphia, on the first Monday of October next (1891), pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Pennsylvania, wherein George W. Patton, Charles J. Bigley, and Mason M. Culver, copartners trading as George W. Patton and Company, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned shall not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand and seal this twenty-third June, A. D. 1891.

WM. BUTLER, *Judge.*

Service accepted for The United States, defendants in error.

W. W. CARR,
Ass't U. S. Attorney.

June 23rd, 1891.

9 (Endorsed:) No. 1. Oct. sess., 1891. Circuit court of the U. S., E. dist. of Penna. Geeorge W. Patton *et al.*, pl'ffs in error, *vs.* The United States of America, def'ts in error. Citation on writ of error and acceptance of service by defendant. Brought into clerk's office of the district court June 23rd, 1891. Charles S. Lincoln, clerk dist. court.

10 In the District Court of the United States for the Eastern District of Pennsylvania, of May Sessions, 1889.

THE UNITED STATES OF AMERICA *vs.* GEORGE W. PATTON, CHARLES J. Bigley, and Mason M. Culver, Trading as George W. Patton and Company.	No. 3. Summons Assumpsit.

Pleas before the honorable the judges of the said court.

It is thus contained:

Be it remembered that on the 24th day of July, A. D. 1889, upon præcipe filed by John R. Read, Esq., attorney of the United States for the eastern district of Pennsylvania, a writ of summons assumpsit issued, which, with the return of the marshal thereto, is in the words and figures following, to wit:

11 UNITED STATES, *Eastern District of Pennsylvania*, } *ss.*:

The President of the United States to the marshal of the eastern district of Pennsylvania, Greeting:

We command you that you summon George W. Patton, Charles J. Bigley, and Mason M. Culver, trading as George W. Patton and Company, late of your district, if they may be found therein, so that they be and appear before the judge of the district court of the United States for the eastern district of Pennsylvania, at a session of the same court to be holden at Philadelphia on the first Monday of August next, to answer to the United States of America of a plea of assumpsit, and have you then there this writ.

Witness the Honorable William Butler, judge of said court, at Philadelphia, this 24th day of July, A. D. 1889, and in the 114th year of the Independence of the United States.

CHARLES S. LINCOLN,
Clerk of District Court.

(Marshal's return endorsed.)

12 [Endorsed:] No. 3. May sessions, 1889. U. S. district court. The United States of America *vs.* George W. Patton, Charles J. Bigley, & Mason M. Culver, trading as George W. Patton and Co. Summons assumpsit. Returnable on the first Monday of August next. John R. Read, Esq., attorney for plaintiff.

July 25, 1889.—At Philadelphia, in my district, served the within writ on George W. Patton, Charles J. Bigley, and Mason M. Culver, by giving to each of them a true and attested copy thereof and making known the contents of the same to them.

So answers—

A. H. DILL, *U. S. Marshal*,
Per ABRAM B. MYERS, *Deputy.*

13 And afterwards, to wit, on the 25th day of July, A. D. 1889, John R. Read, Esq., attorney as aforesaid, declares against the said George W. Patton, Charles J. Bigley, and Mason M. Culver, trading as George W. Patton and Company, in the plea aforesaid in the words and figures following, to wit:

14 In the United States District Court for the Eastern District of Pennsylvania, May Sessions, 1889.

THE UNITED STATES OF AMERICA
vs.
GEORGE W. PATTON, CHARLES J. BIGLEY, and MASON M. CULVER, Trading as George W. Patton and Company. } No. 3.

Plaintiff's Statement.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

The following is the plaintiff's statement of the claim for which the above suit is brought, amounting to $9,577.70.

The defendants, George W. Patton, Charles J. Bigley, and Mason M. Culver, trading as George W. Patton & Company, were summoned to answer the United States of America, plaintiffs, of a plea of assumpsit; and now the said United States of America, by John R. Read, Esquire, their attorney, complain and say that the

No. 1. above defendants are in the wool business, and have their place of business at No. 38 North Front street, Philadelphia, within the above district, and that heretofore, to wit, on the 26th day of November, in the year 1888, were indebted unto

15 the said plaintiffs in the sum of $4,939.30, lawful money of the said United States, being the amount of customs duties theretofore assessed and liquidated by the said United States of America upon certain merchandise, to wit, wool, theretofore, to wit, on the day and year aforesaid imported into the United States of America, at the port of New York, in the State of New York, to wit, within the district aforesaid, by the said defendants in the steamship "Wyoming" from Liverpool, the said importation being numbered 181,233; and the said plaintiffs aver that the said defendants did on the day and year aforesaid pay to the said plaintiffs on account of the said indebtedness the sum of $1,143.60, leaving a balance due thereon to the said plaintiffs of $3,795.70, for whic- the above suit is brought.

No. 2. And whereas also the said defendants theretofore, to wit, on the day and year aforesaid, to wit, the 30th day of November, 1888, were indebted, to wit, within the district aforesaid, unto the said plaintiffs in the further sum of $6,840.60, lawful money of the United States, being the amount of customs duties theretofore, to wit, on the day and year aforesaid, assessed and liquidated by the said United States of America upon certain merchandise, to wit, wool, theretofore, to wit, on the day and year aforesaid, to wit, the 30th day of November, 1888, imported into the said United States

of America, at the port of New York, in the State of New York, to wit, within the district aforesaid, by the said defendants, in the steamship "Spain," from Liverpool, the said importation being numbered 183,820; and the said plaintiffs aver that the said defendants did, to wit, upon the day and year aforesaid, pay to the said plaintiffs the sum of $1,142.50 on account of the said in-
16 debtedness, leaving a balance due thereon of $5,698.10, for the recovery of which the above suit is brought.

No. 3. And whereas also the said defendants theretofore, to wit, on the day and year aforesaid, to wit, the 15th day of January, 1889, were indebted, to wit, within the district aforesaid, unto the said plaintiffs in the further sum of $165.10, lawful money of the United States, being the amount of customs duties theretofore, to wit, upon the day and year aforesaid, assessed and liquidated by the said United States of America upon certain merchandise, to wit, wool, theretofore, to wit, on the 15th day of January, 1889, imported into the said United States of America, at the port of New York, in the State of New York, to wit, within the district aforesaid, by the said defendants in the steamship "Spain," from Liverpool, the said importation being numbered 8028; and the said plaintiffs aver that the said defendants did, to wit, upon the day and year aforesaid pay to the said plaintiffs on account of the said indebtedness the sum of $81.20, leaving a balance due thereon of $83.90, for which the above suit is brought.

A statement of the above claim of $9,577.70 upon the said importations is as follows:

17 No. 181,233, "Wyoming," Nov. 26, 1888:

Amount originally due	$4,939 30	
Amount paid	1,143 60	
Balance due		$3,795 70
No. 183,820, "Spain," Nov. 30, 1888:		
Amount originally due	$6,840 60	
" paid	1,142 50	
Balance due		5,698 10
No. 8028, "Spain," Jan. 15, 1889:		
Amount originally due	$165 10	
" paid	81 20	
Balance due		83 90
Total		$9,577 70

With interest.

JOHN R. READ,
By W. W. CARR,
U. S. Attorney.

24th July, 1889.

18 And afterwards, to wit, on the 31st day of July, A. D. 1889, the said defendants, George W. Patton, Charles J. Bigley, and Mason M. Culver, make reply by affidavit to the said declaration or statement of plaintiff's demand, and the same, being presented by John G. Johnson, Esq., their counsel, and filed, is in the words and figures following, to wit:

19 U. S. D. C., E. D. Pa., May Session, 1889.

UNITED STATES
vs. } No. 3.
GEORGE W. PATTON *et al.*

CITY OF PHILADELPHIA, *ss:*

George W. Patton, being duly sworn, says: I am one of the defendants in the above case and make this affidavit on behalf of all the defendants.

I have a full defence to the whole of the plaintiff's claim, as follows:

The merchandise of which the three importations referred to in plaintiff's statement were composed was waste, which is subject only to a duty of ten cents per pound. At this rate the duties were estimated upon the entry of the merchandise, whereupon defendants paid to the collector the full amount of such duty, and the merchandise was delivered to them with the exception of a few sample bales, which were and are still retained by the collector. Defendants aver that they have paid to the collector all the duties to which the merchandise was legally subject, to wit, the amounts admitted in plaintiff's statement to have been received, and that the subsequent liquidation which was made by the collector months after the delivery of the merchandise to defendants was illegal and void, and the duties thereby sought to be collected, so far as they exceeded the amounts already paid as aforesaid, were
20 not warranted by law.

Defendants further aver that in the case of United States *vs.* Patton, August sessions, 1885, No. 8, it was decided by this court that merchandise of the character of that imported in these importations were subject only to the duty of ten cents per pound; that the Treasury Department acquiesced in said ruling and instructed collectors to apply it to future importations, and that it was in reliance upon these instructions that defendants made the importation. Defendants deny that they are in any way indebted to plaintiffs on any account whatever.

G. W. PATTON.

Sworn and subscribed to before me this 31st day of July, A. D. 1889.

GEORGE HOUSE,
Notary Public.

And afterwards, to wit, on the 11th day of February, A. D. 1891, the said defendants, by their counsel aforesaid, make their plea in the words following, to wit:

Defendant pleads non-assumpsit, payment with leave, &c.
JOHN G. JOHNSON,
Per F. P. P.

21 And afterwards, to wit, on the 7th day of May, A. D. 1891, it is ordered that a jury come to try the issue joined in this cause.

And thereupon, on the same day, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid, being called, likewise come, to wit, 1, Levi Mattson; 2, Andrew Tichthorn; 3, John W. Lock; 4, B. Frank Kennedy; 5, John McAleer; 6, Jacob L. Ranck; 7, John Rees; 8, Benj. F. Musselman; 9, Benj. Saul; 10, Wm. G. Reed; 11, Jacob L. Tripler; 12, Levi Watts, who are duly impanelled, returned chosen, tried, and sworn or affirmed to speak the truth in the issue joined in this cause between The United States of America, plaintiff, and George W. Patton, Charles J. Bigley, and Mason M. Culver, trading as George W. Patton and Company, defendants.

22 And afterwards, to wit, on the 12th day of May, A. D. 1891, the parties aforesaid, by their counsel aforesaid, in open court, present an agreement, and the same, being read and filed, is in the words and figures following, to wit:

"It is agreed that if the jury finds for the plaintiff it shall also find specially and separately whether the tops which were broken into fragments, constituting this importation, were so broken for the purpose of changing the condition of the wool from tops into the fragments resembling waste, for the purpose of evading the duty to which the wool in the form of tops would be subjected on importation to this country, or evading duty to which the importer believed the tops would be liable."

23 And afterwards, to wit, on the same day, the jurors aforesaid upon their oaths and affirmations aforesaid do say that upon the issue joined in this cause they find for the United States for the sum of ten thousand eight hundred and eighty-seven dollars and twenty-six cents, with costs.

And the jury do further find that the tops which were broken into fragments constituting this importation were so broken for the purpose of changing the condition of the wool from tops into the fragments resembling waste, for the purpose of evading the duty to which the wool in the form of tops would be subjected on importation into this country or evading duty to which the importers believed the tops would be liable.

And afterwards, to wit, on the 15th day of May, A. D. 1891, the defendants aforesaid, by their attorney aforesaid, move the court for a new trial of the said issues, &c., and reasons in support of same being filed are in the words and figures following, to wit:

24 U. S. D. C., E. D. Pa., May Sess., 1889.

UNITED STATES
vs. } No. 3.
PATTON.

And now, May 15, 1891, the defendants move the court to grant a new trial in the above case and in support of said motion assign the following reasons:

1. The court erred in charging the jury as follows:

"The interpretation of the statute is for the court, and I instruct you that the term 'wool waste,' as there employed, signifies such parts or particles of the wool as are thrown off in the several processes of its manufacture into wool and worsted fabrics. According to the testimony on both sides, such alone was known as 'wool waste' at the date of the statute and prior thereto. The importation in question, though called 'wool waste,' seems to be so called only because of its resemblance to what was formerly known by this designation. It does not consist of refuse or broken particles thrown off in the process of manufacture, as before described, but is made intentionally by tearing up what are called 'wool tops,' which consist, as you have seen, of wool which has been put through several processes and pre-
25 pared for spinning. The term 'waste,' as the statute employs it, does not embrace this commodity."

2. The court erred in charging the jury as follows:

"Is it a manufacture of wool such as the term 'manufacture' used in the statute contemplates? In the judgment of the court it is not. Without undertaking to define particularly what this term does embrace it is sufficient to say that it does not include these torn fragments of 'wool tops.' It may be questioned, possibly, whether tops themselves are embraced—whether the term includes anything short of a fabric virtually completed for use; but granted that it embraces 'tops,' it does not embrace their fragments when destroyed. Such fragments therefore cannot be said to constitute a 'manufacture' within the meaning of the language as employed in the statute. It would be useless to enlarge on the subject."

3. The court erred in charging the jury as follows:

"We come now to the third of defendant's allegations that the article is not 'scoured wool.' It seems clear from the testimony that it is not what is commercially so designated; but the language of the statute which refers to wool imported scoured in some other than the ordinary condition in which such wools are commonly imported does not and is not intended to describe what is commercially designated 'scoured wool.' The change worked
26 upon it to produce the new condition at once distinguishes it. It is no longer in the condition to which the term com-

mercially used applies. If it came in the condition of what is commercially known as scoured wool, it necessarily would not fall within the provision imposing a double duty. Congress contemplated that such wool might be changed by additional work or manipulation, and thus brought here in other than the ordinary condition in which it was customarily brought, and therefore imposed the penalty of a double duty where this is done. If, therefore, the wool was imported scoured and in a condition other than that in which such wool was customarily imported in March, 1883, and previously, it fell within the provision referred to and the duty assessed is right."

4. The court erred in charging the jury as follows:

"It would follow, gentlemen, from what the court has said to you, while I do not take the case from you, because it is submitted upon the evidence, that the plaintiff is entitled to recover the amount of the claim."

5. The court erred in charging the jury as follows:

"The decision of the customs officers not only determined *prima facie* that the wool imported was in other than the condition in which such wool was imported in 1883 and before, but also that it was changed from one condition to another for the purpose of avoiding duty."

27 6. The court erred in charging the jury as follows:

"Here the wool was changed from the condition of 'wool tops' to that in which you see it resembling waste. If the object of so changing its condition was to avoid the payment of duty, such as would be levied on tops or as the importer supposed would be levied on tops, the assessment made by the customs officers was right."

7. The court erred in declining to charge as requested in defendant's first point, which was as follows:

"The evidence of both plaintiff's and defendant's witnesses being that the article imported was not scoured wool, it was not liable to duty as such, and your verdict should be for the defendant."

8. The court erred in declining to charge as requested in defendant's second point, which was as follows:

"There being no evidence that the article imported was scoured wool, put into extraordinary condition for importation, but, on the contrary, the evidence on both sides being that the article imported was an article known as waste or broken top, manufactured by breaking up another article of commerce known as wool top, which had been manufactured for general purposes by a series of processes from wool, your verdict should be for defendant.

9. The court erred in declining to charge as requested in
28 defendant's third point, which was as follows:

"The words 'woolen rags, shoddy, mungo, waste, and flocks,' used in the tariff act, are to be interpreted in their commercial sense, and, whether the destruction of the wool tops was accidental or intentional, if the resultant product was commercially known as waste it was dutiable as such."

10. The court erred in declining to charge as requested in defendant's fourth point, which was as follows:

"Even if the imported article was not produced before the tariff act of 1883 was passed, yet if, when produced, it was, according to the commercial understanding, included in the commercial designation of waste, it was dutiable as such."

11. The court erred in declining to charge as requested in defendant's fifth point, which was as follows:

"If the imported article was intentionally manufactured from wool, then, even though that fact took it out of the legal definition of the word 'waste,' as used in the tariff act, it would be dutiable only as a 'manufacture of wool,' and your verdict must, therefore, be for defendant."

12. The court erred in answering all of defendant's points as follows:

"I disaffirm the first point presented by the defendant. I
29 cannot affirm any of the points in terms, and I think they are sufficiently answered in what is said in the general charge."

13. The verdict was against the evidence.

14. The verdict was against the weight of the evidence.

15. The verdict was against the law.

FRANK P. PRICHARD,
JOHN G JOHNSON,
Per F. P. P., *For Defendants.*

30 And afterwards, to wit, on the 12th day of June, A. D. 1891, this cause comes on to be heard upon the motion of the defendants for a new trial and the reasons in support of same.

Whereupon it is considered by the court here that the said motion be overruled, the reasons in support of same be dismissed, and a new trial refused.

And thereupon, on motion of the attorney for the United States—

It is considered and adjudged that the plaintiff, The United States of America, do have and recover of George W. Patton, Charles J. Bigley, and Mason M. Culver, the defendants, the sum of ten thousand nine hundred and forty-one dollars and seventy cents, together with their costs by them in this behalf expended.

31 And afterwards a bill of exceptions tendered by the defendants aforesaid and duly signed by the honorable the judge of the court here, together with an assignment of errors and prayer for reversal of the judgment entered, being filed, are in the words and figures following, to wit:

32 May 20, 1891.—The within bill of exceptions is agreed to as correct.

W. W. CARR,
Ass't U. S. Att'y.

In the District Court of the United States for the Eastern District of Pennsylvania, of May Sessions, 1889.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
GEORGE W. PATTON, CHARLES J. BIGLEY, and MASON M. Culver, Trading as George W. Patton and Company, Defendants. } No. 3.

Be it remembered that in the said sessions of May, 1889, came the said plaintiff into the said court and impleaded the said defendants in a certain plea of assumpsit, &c., in which the said plaintiff declared (*pro ut narr.*) and the said defendants pleaded (*pro ut pleas*); and thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the district aforesaid before the Honorable William Butler, judge of the said court, the seventh day of May, 1891, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly empannelled (*pro ut* list of jurors), at which day came as well the said plaintiff as the defendants, by their respective attorneys, and the jurors of the jury aforesaid impannelled to try the said issue, being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue, and upon the trial—

33 The district attorney states that this suit arises on importation No. 181,233 as to thirteen bales of so-called wool waste per steamship Wyoming, and on importation No. 183,820 on twenty bales of so-called wool waste per steamship Spain. The other importation, No. 8028, set out in the statement of complaint, has been withdrawn, the duties having been paid by the importer.

JAY C. CUMMINGS sworn and examined.

By the DISTRICT ATTORNEY:

Q. You are in the employ of the Government and stationed in New York?

A. I am.

Q. And you are familiar with the papers used in the New York office and the marks thereon relating to the importation of goods?

A. I am.

Q. I show you the invoices and entries relating to the importations No. 181,233, G. W. Patton & Company, Wyoming, Liverpool, November 18, 1888, and also No. 183,820, G. W. Patton & Co., Spain, Liverpool, November 30, 1888. They came to the New York office, did they not?

A. They did.

Q. State the action of the importer and then the return of the appraiser.

A. The invoice by the steamsphip Spain was entered on November 30, 1888. There were twenty bales of wool waste on the invoice.

Q. I am speaking of the entry.

A. The entry contains three bales of camels' hair and twenty bales of wool waste.

Q. What is the mark of these twenty bales of wool waste?

A. "407" in a diamond.

Q. What was the amount of estimated duties paid?

A. $1,142.50.

Q. As to these twenty bales of wool waste state what the return of the appraiser was.

A. The appraiser returned it as scoured wool, broken tops, class 1, costing under thirty cents a pound in the unwashed condition, sixty cents per pound.

Q. Notice the entry again and state what was the liquidation there and the amount of duties due on this invoice.

A. The amount of liquidated duties was $6,840.60. The increased duties were $5,698.10.

Q. I show you the invoice that is with the other importation in suit attached to a commission. State what the action of the importer was on this.

A. There was an entry of fifteen bales of wool waste marked "407" in a diamond, thirteen bales marked "801" in a diamond, one bale marked "802" in a diamond.

Q. What were the estimated duties paid?

A. Of the wool waste the estimated duty was $865.50.

Q. What was the return of the appraiser?

A. The appraiser returned it as scoured broken tops, costing
35 under thirty cents a pound in the unwashed condition, sixty cents per pound.

Q. What was the liquidation?

A. The liquidation was $4,544.40. The balance due would be the difference. Both lots are included in this estimate.

Q. What is the increase on that invoice?

A. The increased duty was $3,678.90.

Cross-examined by Mr. PRITCHARD:

Q. Can you tell me when the first appraisement was made on that invoice? (Referring to invoice.)

A. It was made December 7, 1888.

Q. Then was there a second return?

A. Yes, sir.

Q. What was the first return?

A. "Bale of camels' hair as noted correct, 895 in a diamond."

Q. When was the first return as to this marked 407?

A. The next return of the appraiser was on January 21, 1889. He passed on "407" in a diamond "one bale as noted, balance classified."

Q. What does that "one bale as noted, balance classified," mean?

A. That means that one bale out of this lot was sent to the appraiser's stores for examination, and that on the examination of that bale the balance of the bales were classified accordingly.

Q. And how was it classified?

36 A. Classified at sixty cents a pound, as scoured wool, broken top.

Q. Then this return of one bale as noted on January 21, 1889, refers to this classification. (Indicating.)

A. Yes, sir.

Q. What was the date of the liquidation?

A. February 11, 1889.

Q. What was the invoice value of these twenty bales of wool?

A. Twenty-three and a half cents.

Q. I mean the total.

A. £1,118 13s. 11d.

Q. And the appraiser classified them as scoured wool, class 1, costing under thirty cents a pound?

A. Yes, sir.

Q. And under that the collector liquidated a duty first of ten cents a pound on the wool, then he trebled that duty because it was scoured, and then he doubled that tripled duty because it was what, other than in ordinary conditions?

A. I presume that is it; yes, sir.

Q. So that the duty was first tripled, then doubled, and the final amount of duty was liquidated, was how much?

A. $6,840.60.

Q. Take the second invoice. The invoice value of that is what?

A. £769 6s. 10d.

Q. And that was classified by the appraiser as scoured wool, class 1.

37 A. Scoured broken tops costing under thirty cents per pound in the unwashed condition, sixty cents per pound.

Q. There are no such words in the tariff law as "scoured" and "broken top."

A. No, sir. You asked me how we returned it.

Q. You understand by that classification that he classified this as scoured wool, class 1?

A. Yes, sir.

Q. And upon that classification the collector liquidated a duty on it as wool, class 1, of ten cents a pound, then he tripled that duty because it was scoured and then doubled that duty because he claimed it was other than in ordinary condition.

A. That is as I understand.

Q. And the total amount of the duty exactly was how much?

A. Was $4,544.40.

The district attorney here proceeded to read in evidence the depositions of witnesses in England taken in this case in July, 1890, as follows:

I, the undersigned, consul and *ex officio* notary public of the United States of America for the port of Liverpool and its dependencies, do certify and make known to whom these presents shall come that annexed is a true copy of all the testimony taken before me on the dates noted thereon under a commission issued on

38 the 29th day of April, 1890, of "the district court of the United States" for the eastern district of Pennsylvania.

UNITED STATES OF AMERICA
vs.
GEO. W. PATTON, CHARLES I. BIGLEY & Mason M. Culver, Trading as George W. Patton & Company.

In Assumpsit. No. 3, May Session, 1889.

And that also annexed is a true copy of so much of Exhibits A, B, C, D, & E as U. S. District Attorney John R. Read deems essential, and that also annexed is a true copy of a letter from John G. Johnson to John R. Read and of the formal notice by Mr. Read to Mr. Isherwood of the times and places for the hearing.

Given under my hand and seal of office, at Liverpool, this 15th day of July and year of our Lord one thousand eight hundred and ninety.

[SEAL.] THOS. H. SHERMAN,
U. S. Consul, Ex Officio Notary Public.

39

U. S.
vs.
PATTON.

708 WALNUT STREET, *May 26th*, 1890.

John R. Read, Esq.

DEAR SIR: Notice of the taking of depositions in England under the agreement in reference to a commission in the above case may be served by you upon T. H. Isherwood, of Hughes & Isherwood, Liverpool, and such notice will be considered a notice in accordance with the stipulations entered into in the above case.

Yours truly, JOHN G. JOHNSON,
Per T. P. PRICHARD.

40 This copy to be retained.

UNITED STATES DISPATCH AGENCY,
4 TRAFALGAR SQUARE, LONDON, S. W., *21st June*, 1890.

Mr. THOS. HENRY ISHERWOOD, of Messrs. Hughes & Isherwood, United States of America, Plaintiff,
and
GEORGE W. PATTON, CHARLES J. BIGLEY, and MASON M. CULVER, Trading as George W. Patton & Co., Defendants.

DEAR SIR: In accordance with the stipulation given to me by John G. Johnson, counsel for defendants, I hereby notify you that the testimony of witnesses in the above case will be taken on behalf of the plaintiff before Thomas H. Sherman, the commissioner named for that purpose at the office of the United States consul, Liverpool, on July 1st, 1890, at 11 o'clock in the forenoon; at the Victoria*l* hotel, Bradford, Yorkshire, on July 3, 1890, at 11 o'clock in the forenoon; at the same place on July 7th, 1890, at 11 o'clock in the forenoon; at the same place on July 9, 1890, at 11 o'clock in the forenoon, and at the office of the United States consul at Liverpool on July 10th, 1890, at 11 o'clock in the forenoon.

Enclosed you will please find a copy of the stipulation referred to under which I am authorized to serve this notice upon you. I have the honor to remain, yours

Very respectfully,

(Signed) JOHN R. READ,
U. S. Attorney.

41 UNITED STATES CONSULATE,
LIVERPOOL, ENGLAND, *July 1st*, 1890.

Hearing before Thomas H. Sherman, United States consul at Liverpool, commissioner to take testimony in the case of the United States of America *versus* Patton and others under the foregoing commission.

Present: John R. Read, United States attorney, for plaintiff; Charles P. G. Patterson, witness, and Thomas Henry Isherwood, on behalf of defendants.

Mr. Read produces stipulation as to notice upon Mr. Isherwood. Mr. Isherwood acknowledges the receipt of the notice sent to him by Mr. Read as to the time and place of taking depositions under this commission.

CHARLES P. G. PATTERSON, being duly sworn was examined by Mr. READ as follows:

Q. Where do you live?
A. In Cheshire.
Q. What is your business?
A. Wool broker.
Q. With what firm are you connected?
A. With the firm of Hughes & Isherwood.
Q. How long have you been a member of that firm?
A. About four years.
Q. What part of the business do you attend to?
42 A. I attended to the continental and Canadian chiefly.
Q. Do you know G. W. Patton?
A. I have met him.
Q. Has your firm had business with his firm?
A. Yes.
Q. For how long?
A. Since I have been a partner in it.

(Invoice dated 10th day of November, 1888, consular number 10894, marked Exhibit A by the commissioner, shown to witness.)

Q. By whom was that invoice filled up?
A. By one of the clerks.
Q. By which clerk?
A. I think it is Mr. Muir's handwriting.
Q. By whom was it declared?
A. It was declared by me.

Q. The thirteen bales number 407, marked as wool waste, were shipped by your firm to the defendant in this case, were they not?

A. Yes.

Q. What does that number indicate?

A. It indicates the purchase number under which the wool was bought, I believe. The transaction was not made in my department of the business; it was in Mr. Isherwood's, the gentleman now present.

Q. What knowledge have you of the transaction?

A. Only hearsay knowledge.

43 Q. Who has the knowledge?

A. The gentleman present, Mr. Isherwood.

Q. Who gave you the information that enabled you to swear to the declaration?

A. The regular invoice clerk who handed the invoice to me.

Q. Did you personally see the sample by which these thirteen bales were purchased?

A. No; not to my recollection.

Q. By whom was the purchase made?

A. By Mr. Isherwood.

Q. Did you see the contents of the thirteen bales after they were purchased?

A. Not to my recollection.

(NOTE.—"Exhibit B," with paper attached, handed to witness.)

Q. What is that paper?

A. It is the carriage note of those thirteen bales which formed part of fifteen bales mentioned in the note. The two other bales were numbered 801, 802, respectively, on the invoice, "Exhibit A." This memorandum attached to the carriage note is in my writing and signed by me.

Q. From the knowledge which you have as member of this firm and after examining "Exhibit B" and the paper attached to it are you able to say from whom these thirteen bales were purchased?

A. Yes; from the name in the corner I see they were

44 purchased from T. A. Firth & Co., of Bradford.

Q. And from your knowledge of the transaction they are the same as form the subject of this suit?

A. Yes.

Q. Have you in your possession and are you ready to produce according to the terms of the subpœna all letters and correspondence, either with George W. Patton & Co. or with the firm of T. A. Firth & Co., touching respectively the sale and purchase of fifteen bales, thirteen of which consisted of so-called wool waste sold to the said George W. Patton & Co. on or about the 10th of November, 1888?

A. The papers in question are in the possession of Mr. Isherwood and will be duly produced by him when examined.

Q. Who is the senior partner in the firm?

A. Mr. F. R. Hughes, Jr. He has no personal knowledge of the transaction.

The United States attorney states that he concludes this examination of Mr. Patterson, with notice, however, to him to be present at this office on July 10th, at 11 o'clock, unless notified to the contrary. The commissioner instructed Mr. Patterson accordingly.

THOMAS HENRY ISHERWOOD sworn:

Mr. Isherwood requests that his examination be suspended until Thursday morning next, July 3d, at Bradford, Victoria hotel, at 11 o'clock in the forenoon; to which the commissioner assents and adjourns this meeting until July 3d at 11 o'clock.

45 Hearing resumed at 11 a. m., July 3d, 1890, Victoria hotel, Bradford.

Mr. John R. Read appeared for the plaintiffs.

Mr. T. A. Watson (of the firm of Watson & Sons, solicitors, Bradford) appeared for the defendants.

THOMAS HENRY ISHERWOOD recalled.

Examined by Mr. READ:

Q. How long have you been in the wool business?

A. Since 1856.

Q. How long have you been a member of the firm of Hughes & Isherwood?

A. About seven years.

Q. Do you know George W. Patton, of the firm of George Q. Patton & Co.?

A. I do.

Q. You deal in all kinds of wool?

A. I do.

Q. How long have you been dealing with Mr. George W. Patton, of the firm of George W. Patton & Co.?

A. I have dealt with Patton about twelve years personally and continued since joining Mr. Hughes.

Q. You are familiar with this invoice?

(Document referred to was exhibited, marked "A.")

46 A. Yes.

Q. And with the 13 bales that are mentioned in it?

A. Yes.

Q. Did you personally make the transaction with Messrs. George W. Patton & Co.?

A. Yes.

Q. When?

A. The date of that contract.

Q. About the 13th of October, 1888?

A. The 13th of October, 1888.

Q. These thirteen bales are marked block No. 407?

A. Block 407.
Q. What does that mean?
A. That is the sample number by which they are sold.
Q. Do you mean this particular shipment?
A. This particular shipment.
Q. How long have you been using that number in connection with your dealing with Mr. Patton?
A. Since the first purchase he made of it—since June, 1888.
Q. First purchase of what?
A. Of 407 waste. Somewhere about June.
Q. Was that the date of his first purchase?
A. To the best of my recollection.
Q. Of this particular article?
A. Of this particular number.
Q. Who gave that number to the article?
A. We did.
47 Q. Messrs. Hughes & Isherwood?
A. Yes.
Q. Was all the merchandise shipped by you from June until the date of this shipment of the same kind?
A. No; it varied.
Q. In what particular?
A. The original sample of 407 consisted of slub and lap waste, which was improved upon in succeeding orders.
Q. How?
A. By having more broken-top waste and less slubbings.
Q. How long had you been dealing in this commodity called 407, either with Mr. Patton or anybody else?

(Mr. Watson objected to the question on the ground that the inquiry had nothing to do with Mr. Isherwood's dealings with other persons.)

A. I am willing to answer with regard to transactions with Mr. Patton, but not with regard to other persons.
Q. How long have you been familiar with this particular commodity or article that we call 407—the article like this you shipped to Mr. Patton?
A. Well, it would be the 13th October—about October.
Q. Well, now, how long have you been familiar with that article?
A. Previous to that?
Q. Yes.
A. I never saw any before.
Q. That is before you shipped it to Mr. Patton?
48 A. Yes.
Q. You had never dealt in it before?
A. No.
Q. Why not?
A. Because I never had any orders for it. I had never been asked for it.

Q. Is it bought and sold in England for consumption? I ask as far as your knowledge extends only.

A. I cannot speak to that. I don't know anything about it.

Q. I am only asking of your own knowledge. Have you any knowledge of its being bought and sold in England for consumption?

A. I know there is a large business for waste in England.

Q. I am only asking your own knowledge. If you have any knowledge, say so.

A. What is the question?

Q. Have you any knowledge as to whether this article is bought and sold in England for consumption?

A. Well, yes; it is.

Q. By whom?

A. We have sold it ourselves.

Q. To what extent?

A. Well, I should think we have sold 40,000 or 50,000 lbs. weight.

Q. When?

49 A. Within the last six months.

Q. To whom?

A. I cannot tell you that.

Q. I mean what kind of dealers?

A. To different people in England.

Q. Prior to that time you had not?

A. Prior to that time we had not.

Q. From whom did you purchase these thirteen bales which you shipped to George W. Patton & Co.?

A. From T. A. Firth & Co.

Q. Mr. Knowles of that firm is present?

A. He is a member of that firm.

Q. What is this commodity composed of, Mr. Isherwood?

A. It is broken top.

Q. That is what it is, is it not?

A. That is what I believe it is.

Q. You mean by broken top that it is a top of wool broken into pieces, do you not?

A. Yes.

Q. For purposes of consumption the top itself is in better form to be used than when broken?

A. Certainly.

Q. Why, then, was it broken up before exportation?

A. That I cannot tell. I suppose because they found they could get a better price for it in a broken state than in the top.

Q. When you say "they" whom do you mean?

A. Parties we bought it from.

50 Q. Why did you buy it in that form rather than the other?

A. Because our orders were for broken-top waste.

Q. What was the price at that time (as near as you can recollect) of the top itself of that same quality?

A. I have no knowledge of that at all.

Q. Do you know either by verbal communication or by letter from Messrs. George W. Patton & Co. why they wanted this particular article shipped to America in the form in which it was shipped?

A. Why they wanted?

Q. Yes.

A. I don't know Mr. Patton's business.

Q. Do you mean to say that you never had any communication with Mr. Patton on the subject of the shipment to him of this article called broken top?

A. Certainly.

Q. You never had?

A. Certainly. I say we had; we had orders for it.

Q. What did he say to you in relation to it and why he wanted it shipped?

A. He wanted it shipped for his customers there. I suppose he had sold it.

Q. I do not ask your suppositions; I simply ask the facts.

(Question No. 50 repeated.)

A. No; I don't.

51 Q. Do you mean to say that you don't know why Mr. Patton wanted you to ship to him broken top rather than the top itself?

(Mr. Watson objected to the question, which was thereupon repeated by Mr. Read.)

A. I don't.

Q. Had you any conversation with him on the subject?

A. No.

Q. Had you received any letters from him after the shipment of this broken top rather than the top itself?

A. Yes.

Q. Well, what did he say?

A. He said that he wanted 407 waste, all broken top.

Q. Did he tell you why?

A. No; except that his customers who had it previously complained that it had too much slubbing.

Q. Had you been informed by Mr. Patton, either verbally or in writing, that if this commodity could be entered as waste it would only pay a duty of 10 cents a lb.?

A. No; I did not know what he was paying on it.

(A sample of wool was shown to witness by Mr. Read.)

Q. Is this like the article you sold to Mr. Patton?

A. Yes; something like it.

Q. Is it not exactly like it?

A. I could not say that; I cannot remember what the thirteen bales were exactly.

Q. You cannot say because you don't remember?

A. This is similar stuff.

52 Q. And that is what you call broken top?

A. Broken-top waste.

Q. How long have you called that commodity broken-top waste?

A. Ever since we bought it.

Q. Now, you have been dealing in wool for a great many years; how long, as a wool dealer, have you been calling it broken-top waste?

A. Since October, 1888.

Q. And never before that?

A. Never before that.

Q. What did you call it before that?

A. I never had any.

Q. Never dealt in it?

A. Never dealt in it.

Q. Never shipped it to the United States?

A. Never shipped it to the United States.

Q. And it was an article like that you bought from Mr. Firth?

A. Yes.

Q. Have you any personal knowledge as to how that top is made into that form?

A. No.

Q. That is not your business?

A. That is not my business.

Q. That is scoured wool, is it not?

A. It is made from scoured wool.

53 Q. After the wool is scoured it is put into the form of tops, is it not?

A. I have no personal knowledge of the manufacturing of this stuff; I have no technical knowledge.

Q. Can you tell me about what was the price per lb. of scoured wool of this quality at the time that this purchase was made from Mr. Firth?

A. No; I cannot, because I really don't know what sort of wool it is made out of; it may be a mixture. We can get that from Mr. Knowles. I don't suppose I could guess to sixpence per lb. what blend that was made out of. It may consist of a variety of wools put into a blend.

Cross-examined by Mr. WATSON:

Q. I think, Mr. Isherwood, your firm acts entirely by way of commissions as agents for other persons?

A. Purely as brokers.

Q. Your place is in Liverpool?

A. Yes.

Q. Which is not a city of manufacture at all?

A. No.

Q. This waste is produced in the manufacturing district of Bradford?

A. Yes.

Q. Entirely?

A. Entirely, so far as I know.

Q. Have you any practical acquaintance with the processes of manufacture in Bradford?

54 A. No.

Q. Your business is to buy and sell what your customers instruct you to buy and sell?

A. That is so.

Q. Do you know the processes by which what is called the Botany top is produced?

A. I have no practical knowledge of it at all.

Q. Have you been in the habit of buying and exporting to America goods which you have bought as waste?

A. Oh, yes; very largely.

Q. And, I dare say, the articles which have been described as waste and been exported as waste form a very great variety?

A. A very great variety.

Q. Has the waste which you have exported prior to this transaction contained more or less of material similar to that which has just been produced to you?

A. Yes.

Q. And I understand you to say that latterly you have received instructions from Messrs. Patton & Co. to obtain for them waste which was to contain a great predominance of this particular material than heretofore?

A. That is so.

Q. It is suiting their customers better, as you have said?

A. Yes.

Q. Just look at that document. Is that a true copy of your contract with Messrs. Patton & Co. for the purchase for them for the 13 bales in question?

55 A. It is.

(Exhibit marked "C" put in.)

Q. Now, look at this document. Is that a true copy of your contract with Messrs. Firth & Co. for the purchase from them of 13 bales in question?

A. For sale on their account.

Q. It is, in fact, a purchase?

A. Yes.

(Exhibit put in and marked "D.")

Q. Look at this document. Is that a true copy of the invoice you received from Messrs. T. A. Firth & Co. for the 13 bales in question?

A. It is.

(Exhibit put in and marked "E.")

56 JOSEPH KNOWLES duly sworn.

Examined by Mr. READ:

Q. Where do you reside?

A. 19 Howard street, Bradford.

Q. What is the name of your firm?

A. T. A. Firth & Co.

Q. You have been present and heard the testimony of Mr. Isherwood in this case?

A. Yes.

Q. Do you remember this transaction in relation to these 13 bales, No. 407?

A. Yes; I have heard the number, 407, for the first time from Mr. Isherwood this morning. Our lot number of these 13 bales is No. 3314.

Q. This (Exhibit E) is a copy of your bill?

A. Of our invoice.

Q. Of your invoice to Messrs. Hughes & Isherwood, and that was sent by you to them after you received from them this notice (Exhibit D) dated 13th October, 1888?

A. That is a copy of our receipt.

Q. Have you any letter from Mr. Isherwood in relation to that order?

A. That is the only document we had in relation to that order.

Q. You mean to say that this is the only communication you have from Messrs. Hughes & Isherwood about the sale of these 13 bales?

A. Yes.

57 Q. How did Mr. Isherwood know that you had them for sale?

A. I was in Liverpool a few days before and he showed me a sample, and I sent them this sample.

Q. Sample of what?

A. Of 3314.

Q. You showed him a sample?

A. We sent that sample on October 12th.

Q. You sent that sample to Mr. Isherwood on October 12th?

A. Yes.

Q. By mail or hand?

A. By hand.

Q. By whose hand?

A. By one of Mr. Isherwood's men—Mr. Prowse.

Q. Had you any correspondence with Mr. Isherwood in relation to that matter prior to the visit of Mr. Prowse?

A. No.

Q. And what was the sample you sent to him?

A. Broken-top waste.

Q. How much of it had you on hand?

(Mr. Watson objected to the question. The question was repeated by Mr. Read.)

A. I decline to answer.

Q. Had you the 13 bales then in your possession?

A. Well, I could not answer that.

Q. What is the best of your recollection about it?

A. Well, I don't think we should have the 13 bales in
58 our possession at that time. We should have them contracted for.

Q. Well, now, Mr. Knowles, at the time you received this contract from Messrs. Hughes & Isherwood, dated 13th October, 1888, had you these 40,000 lbs. of No. 3314 in your possession?

A. I had it all bought and contracted for when I took the order.

Q. With whom was the contract?

(Mr. Watson objected to the question.)

A. I decline to answer.

Q. Why do you decline to answer?

A. Because I do not think that bears on the question at all, and I don't care to expose our business.

Q. How was this material made?

A. It is made by breaking up the tops and making them into waste.

Q. How is it done—by hand or by machinery?

A. It is done by hand.

Q. Were these 13 bales broken up in that way?

A. Yes.

Q. Can you describe the processes by which these 13 bales were made in that form?

A. First taking the tops and breaking them up into that length.

Q. That is the way in which these 13 bales were prepared for shipment, is it not?

A. Yes.

59 Q. Was it done after you received this contract from Mr. Isherwood?

A. Yes.

Q. Was the top in your possession when you received this contract from Mr. Isherwood—the top itself?

A. Part of it would be, and the other part had to come in. I had contracted for it.

Q. You had part of the top in your possession and part you obtained afterwards?

A. A part was to come in under a current contract and part was in our possession.

Q. After you received this contract you had the top broken?

A. Yes.

Q. Are you able to tell me at that time the price of the top was?

A. From 22¾d. to 23¼d.

Q. And after it was broken you sold it to Mr. Isherwood for 23½d.?

A. Yes.

Q. And may I ask you whether that additional price represented the cost of having it broken?

A. It represented the cost and our small profit.

Q. The cost of breaking the top and your profit?

A. Yes.

Q. How long have you been in the wool business, Mr. Knowles, as a merchant?

A. I have been connected with it 30 years as a buyer and
60 seller, and a partner 13 years.

Q. Have you lived in Bradford all the time?

A. Yes.

Q. For how long a period has your firm been engaged in dealing in this article called broken top?

A. This would be about the beginning—from June, 1888.

Q. Is that sample (produced) like the commodity that you shipped to Messrs. Hughes & Isherwood?

A. Yes; very similar.

Q. Is that what is known as broken top?

A. Yes.

Q. Mr. Knowles, who broke these tops?

A. Our man broke them.

Q. What is his name?

A. We have two or three. I could not give you the name of the man who did the job then.

Q. You mean a man in your employment?

A. Yes; our warehouseman.

Q. They were broken in your warehouse?

A. Yes.

Q. After you had received this contract from Mr. Isherwood?

A. Yes.

Q. About how long did it take you to break these 13 bales?

A. It would take, perhaps, two or three days.

Q. And two or three men?

A. Yes.

61 Q. And before it was broken up it was in the form of tops, round balls, was it not?

A. Yes.

Q. Why was it so broken?

A. To make it like our sample.

Q. For purposes of consumption it could be better *be* used in the form of top, could it not?

A. That depends on what it was required for.

A. I mean for use.

A. That depends what use it is put to.

Q. What is the first use of top?

A. If top was to be spun into worsted yarn it would be better in the top; if it was to be made into woolen yarn it would be better broken up.

Q. From your knowledge of the business, generally speaking, are you able to tell me how long it has been since these tops were broken up for the purpose of shipment, if you know?

A. I do not know.

Q. You have no knowledge on that subject excepting as to your own business?

A. No, sir.

FRIDAY, *May* 8, 1891.

The district attorney continued reading depositions of witnesses in this case taken in England as follows:

Cross-examined by Mr. WATSON:

Q. Mr. Knowles, when you were in Liverpool on the occasion that you have spoken of, did Mr. Isherwood show you a sample of something he wished to purchase?

62 A. I could not speak positive. He showed me a sample of waste. We were shipping waste then and he asked me if we could furnish them with more of this broken, top waste; to be clear of the slubbing—as clear as it was possible to get it.

Q. Upon that did you send him a sample?

A. I sent this sample by Mr. Prowse, who was here on that day.

Q. Mr. Prowse happened to be attending the market here and you sent them a sample of what you could do?

A. Yes.

Q. Did you know what Mr. Isherwood intended to do with it?

A. No.

Q. Did you know whether it was to be sold by Mr. Isherwood in this country or in any other country?

A. No.

Q. Now, you have spoken of the difference between the price of top and the amount for which this broken-top waste was sold. Was the price of the top you there referred to the price to you?

A. The price we gave for it.

Q. Whether you had sold it to Mr. Isherwood as broken top or sold it to any one else, you would have expected some profit upon that price?

A. Yes.

Q. Would the difference in any case, between the price you gave and the price for which you sold it, be more than the ordinary profit?

63 A. There is a little reckoned in breaking it up to make it into waste.

Q. In the state in which you sold it to Messrs. Isherwood is it not known technically in the district of Bradford as Botany laps?

A. Yes; or Botany waste.

Q. All wool intended to be combed is first scoured, is it not?

A. I believe all wool nearly is. There is sometimes an exception to that, but not in Botany wool—not in fine wool. All fine wools are first scoured.

Q. Doesn't it then go through a process known as preparing?

A. Carding and preparing.

Q. Then it is put upon the comb?

A. Yes.

Q. When it comes off the comb is it not in long lengths known as slivers or slubbing?

A. Slivers, in this district.

Q. The slivers being of continuous length—what length?

A. They can make them any length nearly; they run into balls
Q. Hundreds of yards in length?
A. Yes.
Q. A sliver will vary in thickness?
A. Yes; not necessarily all one thickness.
Q. I don't mean the same sliver, but one sliver as against
64 another sliver, may be of a different thickness altogether?
A. Yes.
Q. Now is not the next process what is called gilling?
A. Yes.
Q. That is to say, it is put through what are called gill boxes?
A. Yes.
Q. In the process of gilling, are not several slivers combined or doubled so as to form one sliver of a greater thickness?
A. They come up together in the gill box.
Q. They come up together in the gill box and come out different thicknesses at the end?
A. Yes.
Q. They are then taken into the finishing boxes?
A. They are taken into the drawing-room and finished.
Q. At that point the sliver is made into round balls?
A. Yes.
Q. Wound together like a ball of worsted?
A. Yes.
Q. In the various processes, are not what are called laps produced?
A. Yes.
Q. Short ends?
A. Yes.
Q. Are these called combers' laps?
A. They are called drawing laps.
Q. Drawers' laps or combers' laps?
65 A. Yes.
Q. And these laps are sold, are they not, as a regular well-known article of merchandise?
A. Yes.
Q. As Botany laps?
A. Yes.
Q. Do you know anything of spinning?
A. Yes.
Q. The tops, are they sold very often to the spinner?
A. Yes.
Q. And the spinner spins them into yarn?
A. Yes.
Q. In the process of spinning, are not what are called spinners' laps produced?
A. Yes.
Q. Are those short lengths of the sliver?
A. Yes; thinner than the slubbing.
Q. In the same way, are not spinners' laps sold as a regular article of merchandise in this district?

A. Yes.

Q. I believe it is a constant practice to mix together different kinds of Botany wool in the combing for the purpose of producing a top—a combined top?

A. Yes; it depends upon what they require the top for.

Q. To produce a top which may be required you mix together different kinds of wool?

A. Yes.

Q. At infinitely varying prices?

66 A. Yes.

Q. I dare say you sometimes find, after using the best judgment you can, that the top comes in much shorter than you anticipated—shorter in staple?

A. Yes.

Q. I believe also, Mr. Knowles, that you very often do not get as good a color as you would have anticipated in the top?

A. It does not always come out as we expect in color.

Q. And in such cases the top would be worth very much less money than it would otherwise have been?

A. Yes.

Q. Now, in such cases as those is not the top sometimes broken up for the purpose of being recombed along with something of a longer staple?

A. Yes.

Q. In order to improve the length of the staple?

A. Yes.

Q. Or in the same way, with something of a better color, in order to produce a better-colored top?

A. Yes.

Q. Is it not also frequently the case that a top is broken up for the purpose of being recarded and improved?

A. Yes.

Q. To get out the burrs?

A. Yes.

Q. We may find a burred top has to go to be recarded?

A. Yes.

Q. A burr is a seed?

67 A. A seed with a rough edge, which is bad to get out of the wool or top.

Q. For these reasons are Botany laps or short length of sliver of this description constantly on hand for the purpose of sale or otherwise?

A. Yes. In the drawing-room there are part ends broken off the tops as they are going up to the gill-box to let them finish off level together and they are thrown into the lap.

Q. There are large quantities of Botany laps constantly in the market, are there not?

A. Yes; they are made regular.

Q. When you sell Botany laps you never inquire what is going to be done with them?

A. No; that is not my business.

Q. They may be used for any one of those purposes that I have mentioned?

A. Yes.

Q. Now, however, these Botany laps are made. Whether by breaking up the top or whether they be combers' or spinners' laps, what do you call them—under what denomination do they come?

A. They come under the denomination in the trade here of "Botany laps" or "Botany waste."

Q. Are the two terms synonymous?

A. Yes.

Re-examined by Mr. READ:

Q. Mr. Knowles, there were no burrs in this stock which
68 you had and which you subsequently broke up?

A. I don't think there were.

Q. Was it off-colored?

A. Some was off-colored a little; it varied a little in color.

Q. What kind of top was it?

A. Chiefly made, I believe, from Australian wool—Botany wool.

Q. And a good article?

A. Yes; a good value at the time.

Q. What is Botany lap?

A. Well, what goes under the name of Botany lap here may be a piece of broken top. It is rather a wide term here—Botany lap. I can show you a sample.

Q. I don't what a sample; I simply ask you what is Botany lap? Can you tell me in so many words what a Botany lap is?

A. Botany lap is the waste made on running round the roller; the real Botany lap is made on the roller by running round—on the upper roller—in either the preparing or spinning—either in the drawing-room or spinning-room; but in Botany waste or laps we get a broken piece of top mixed in with them.

Q. What is done with this Botany lap that is made either in the drawing or spinning room; does it fall to the floor?

A. No; they take it off.

Q. What do they do with it?

69 A. Put it into a bag for the purpose; they have a bag—a waste basket—and it is taken from the room and sold as Botany waste or Botany laps.

Q. It is not rolled out into tops before it is sold?

A. No.

Q. Now, these Botany laps, as you call them, are composed of short pieces taken from the drawing-room?

A. Short pieces of top made in the drawing-room or the roller waste made in the drawing-room or the bits pulled off the rovings or what runs round the roller at the top.

Q. They are the natural waste of the process of manufacture?

A. Yes; made in the ordinary way of preparing and spinning.

Q. What does that sell for per pound?

A. It depends upon the market price of wool and tops and the demand. In 1888 a good lot was sold for as much as tops.

Q. For what purpose?

A. Well, into the woolen trade, owing to the high price of wool and the general demand we had for it.

By Mr. WATSON:

Q. Explain what you mean "into the woollen trade."

A. That is, for the woollen trade in this country, to make them for backing for cloth—for fine worsted. They use these fine Botany laps—broken stuff like this—for making backings for worsted coatings. That is the way we sell them, or into the shawl trade. We call it the woollen trade where the wool goes in the carding.

70 By Mr. READ:

Q. Now, Mr. Knowles, I understood you to say in answer to Mr Watson that the wool is scoured then carded?

A. Carded or prepared.

Q. Carded or prepared and then combed?

A. Yes.

Q. And after it is combed it is called slivers?

A. It is in a sliver of top.

Q. And then it is put through the gilling box?

A. Yes; they go through the gilling machine to put a finish on the top and the top comes out finished as a top after going through the gilling box.

Q. That is what had been done with this article when you had it?

A. I believe so, to the best of my knowledge.

Q. It had gone through the gilling boxes and put into the form of top?

A. Yes.

Q. During that process that this article had gone through are you able to say whether any Botany laps had been made?

A. Well, I could not speak for that; there would be part Botany waste made from it in the combing.

Q. In the combing and in the carding there would be Botany waste made?

A. Botany waste made—there would be no waste made as waste except dirty card waste. It is all worked up and put into
71 the slubbing and noils. It is reworked as the lot goes on. There is no such thing as a clean card waste. They work it up.

Q. So that in the preparing of the tops in question in this case the Botany laps that would have been naturally made, you say, would have been used in the process?

A. Well, there would be no real Botany laps made in the combing process, but the waste that is produced in the combing is recarded along with the remainder of the wool and made up. There is no waste made in combing except the card waste in Botany.

Q. Why not?

A. Because they work it up in top and noil.

Q. Well, then, pra-tically, in the making of these 13 bales of wool there were no Botany laps? I am speaking of the wool as you had it in the form of tops and I ask you whether in making these tops any Botany lap was made?

A. I could not say for that. I did not see them combed and I could not tell what were made out of them.

Q. When you bought that top you did not buy it as Botany lap, did you?

A. No; I bought it to break up.

Q. What did you buy it as—what did you call it?

A. It was sold to us as top.

Q. You knew it as top and not as Botany laps?

A. Yes.

Q. And it is not known as Botany laps in the form in which you bought it?

A. Not this lot.

72 Q. What do you mean by "Botany laps made regular"?

A. That is lap which is made by the spinner in the ordinary way of spinning.

Q. About how much waste would be made in making 1,000 lbs. of top like this article you sold that you had in your hands before you broke it up?

A. I could not tell that; very little, indeed, in Botany waste in the combing process.

Q. Can you give me any idea at all?

A. The combers now all have different systems and they make very little waste indeed in the combing process.

By Mr. WATSON:

Q. In certain states of the market is not the waste made from the same lot of goods actually worth more in price than the goods themselves?

A. Occasionally it is so owing to special demands for a certain thing.

Q. Noil, for instance, from the same lot is in certain states of the market worth more than the top itself?

A. In double combed noil in Botany laps you may get more than the top.

Q. And that would influence the care he should take whether he should make little or much waste?

A. Yes.

By Mr. READ:

Q. What is this noil used for?

A. For the woolen trade or backings for worsted.

Q. In what form is it sold?

73 A. Loose as a noil.

Q. What do you mean by a noil?

A. It is the short taken out of the wool in the combing process.

Q. Is it produced in the combing process?

A. It is the short which comes out of the wool in combing.

Q. It is not rolled up into tops?
A. No.

By Mr. WATSON:

Q. And whether this broken top (a sample of which has been produced) is produced by the comber or whether it is broken up, whatever the intention may be, when it is in point of fact broken up, does it differ in any respect from ordinary Botany laps?
A. No; it is sold as Botany laps or Botany waste. We have sold it as that.
Q. Whatever the cause of breaking up, is it sold as waste?
A. It is waste—Botany waste—broken up.

By Mr. READ:

Q. But as I understand you, you never sold an article like this (produced) so broken up until you commenced you. dealings with Patton in June?
A. Yes; before that.
Q. How long?
A. I have sold a shipment or two occasionally for our home trade years back.
74 Q. Did you break it up for them?
A. Yes.
Q. When did you first commence it?
A. We may have broken a bag of tops up now and again for years.

The examination was adjourned till Monday, 7th inst.
75 Hearing resumed at 12 m., July 7th, 1890.

VICTORIA HOTEL, BRADFORD.

Mr. Read appeared for the plaintiffs.
Mr. Watson represented the defendants.

MAXIMILIAN DELIUS duly sworn.

Examined by Mr. READ:

Q. Where do you reside?
A. At Claremont, Bradford.
Q. What is your business?
A. We are yarn and stuff merchants.
Q. What is the name of your firm?
A. Delius & Co.
Q. How long have you personally been in the wool trade?
A. About 8 years personally.
Q. And what part of the business do you attend to?
A. I manage the business.
Q. Do you buy and sell wool?
A. Certainly.
Q. Do you sell it for domestic use or exportation?
A. For both.

Q. Will you kindly look at the sample of wool produced? (Witness examined the samples.) Have you examined the samples?

A. Yes; quite sufficiently.

76 Q. From your knowledge of the business, will you kindly state what is the commercial designation of that sample—that is to say, what is it called?

A. It is broken top.

Q. What is broken top?

A. Top that is broken up.

Q. Do you know how it is broken up?

A. It may be broken up in various ways; very often by hand, sometimes by machinery.

Q. When it is so broken up by hand or machinery, what is it principally used for?

A. It is used for various purposes. Sometimes it is used in the worsted trade.

Q. Is it principally used for domestic consumption or principally used for exportation to America?

A. As far as I know it has been used for exportation.

Q. That is, to America?

A. Yes, and other parts, too.

Q. Do you personally know from your knowledge of the business and within the time you have specified whether it is used for any other purpose or not here?

A. Well, I have no knowledge of it.

Q. No knowledge of its being used for any other purpose than for exportation?

A. Personally, I have no knowledge, although I have heard it said it has been so used.

Q. Do you know how long it has been the practice to export this broken top to America?

77 A. Well, you see, never having exported any of this kind of waste I should not really like to say. I should say it would be towards the end of 1888 or the middle of that year, perhaps. I am not sure when it was first done and I should not like to say.

Q. Has it ever been offered to you?

A. Oh, yes; I have had it offered occasionally.

Q. Since what time?

A. Well, I believe it was mostly in 1888, so far as I remember.

Q. None before that?

A. None. I don't remember any before that.

Q. Have you ever shipped scoured wool to America?

A. Scoured wool, never.

Q. Do you know to what extent tops have been broken up in Bradford since, say, the middle of the year 1888?

A. I really have no idea.

Cross-examined.

By Mr WATSON:

Q. Mr. Delius, your firm are simply merchants?
A. We are wool merchants; yes.
Q. You have no machinery?
A. No machinery.
Q. And you know nothing about any processes of manufacture in your business—you are not connected with any process?
A. We are not connected with any process.

78 Q. A material portion of your business is that of commission merchants, is it not?
A. To a certain extent.
Q. A material portion?
A. A good portion of it, at all events.
Q. You buy to order and sell to order.
A. We sell to order.
Q. For principals?
A. Yes; for principals, too.
Q. And mainly for principals abroad?
A. Yes; of course we do a home trade and a foreign trade.
Q. I am speaking of your commission business.
A. Our commission business is principally abroad.
Q. Whatever commission you receive from abroad to buy in this market you are glad to buy it?
A. When we can make anything out of it; yes.
Q. Whether it be wool or whether it be yarn, stuff pieces, or waste, it is all right if you can make a profit out of it?
A. If we can buy it; certainly.
Q. Have you bought waste from spinners?
A. Certainly we have.
Q. From combers?
A. From combers? No.
Q. From wool and waste dealers?
A. Certainly.

79 Q. I dare say the waste that you bought has varied considerably in kind and quality.
A. Of course, there are a great many qualities of waste.
Q. Some far removed from its original quality of wool and some very nearly approaching the quality of wool. Some of the waste would be nearly as good as the wool itself and others would be very much deteriorated?
A. Well, it is pretty often—generally—deteriorated.
Q. But more or less?
A. Of course, it is more or less; it depends upon the process it has gone through.
Q. Do you know what Botany laps are?
A. Do you mean can I define Botany laps?
Q. Yes.
A. I am afraid I cannot do it.
Q. Do you know what they are?

A. Yes; I do.

Q. Are they not pieces of sliver of which the top is composed of short ends?

A. Yes; they are pieces of waste that is made in the process of spinning.

Q. Are Botany laps short ends of the sliver—exactly the same sliver which goes on the top?

A. It is a part of the top, so far as I know.

Q. Take this piece, for instance (a portion of the sample produced by Mr. Read was handed to witness by Mr. Watson). If you
80 know anything at all about —, could you tell me whether that piece is a lap made by the spinners or the comber or whether it has been broken off the top?

A. To look at one piece like that, it would be exceedingly difficult to answer the question.

Q. Would it be difficult to answer or difficult to tell?

A. Well, of course, I should not like as an expert to give an opinion upon it. I would not give an opinion upon one bit like that; I should want to look at the sample.

Q. Suppose you were to take a dozen of these short ends and lay them on the table, could you tell which if these pieces had been broken from the top and which was ordinary spinner's lap?

A. You mean if you had them all put separately?

Q. Yes.

A. I would not give an opinion upon that.

Q. I don't mind whether you give an opinion or not. I ask can you tell.

A. You see, in laps sometimes there might be a little bit of broken top in amongst it.

Q. Still that is not an answer to my question. Let me repeat it: The sample produced consists entirely of a large number of short laps?

A. Quite so.

Q. Take a dozen of those short laps out, lay them on the table, and I introduce you to them without any previous knowledge; could you choose out of those which had been broken from the top or those which had been produced in the ordinary way as a spinner's lap?

81 A. Do you mean just short lengths?

Q. Yes.

A. I could not.

Q. A spinner's lap is in fact a short length of sliver which would otherwise be made into yarn?

A. I don't understand that question.

Q. Do you know the process of combing at all?

A. I know something about it; certainly.

Q. Do you know what the process is which in the end produces—the last process, I mean—which produces the sliver which goes into top; do you know what that process is?

A. No.

Q. Do you knew the process immediately before that?

A. I don't understand much about spinning, I must tell you.

Q. Or about combing?

A. About combing or spinning. I am not an expert in it.

Q. Did you ever see a top in the process of being broken up?

A. No; I don't think I have ever seen it in the process of being broken up. I have seen little bits broken up, but I have never seen it broken up in bulk.

Q. That is, you have taken bits in your hand in order to test the sample yourself?

A. Yes.

Q. But have you ever seen it in the top for the purpose of being broken up?

A. No.

82 Q. May I take it if a quantity of this material were submitted to you that you could not tell whether they were Botany laps made in the ordinary way or Botany laps made in breaking up tops?

A. I could tell.

Q. How could you tell?

A. I could tell easily. For instance, you are talking about a dozen small samples. If I see it in bulk—I see this (sample produced)—I know distinctly what that is, perfectly well.

Q. You suspect what it is?

A. I know from my knowledge pretty well what it is.

Q. Well, let us see. Do you know because of seeing a large quantity together like that?

A. Yes.

Q. That is the reason?

A. Well, principally.

Q. But if you had had this same quantity mixed with a similar quantity or a larger quantity of waste pure and simple. You have already answered that your principal reason for stating you know that is broken top would be from a quantity you know altogether?

A. Quite so.

Q. Now let me proceed. If you saw this same quantity of this material mixed with a quantity of what you would undoubtedly call ordinary waste, would you then be able to say whether this was laps or broken top?

A. Do you mean this certain portion of it?

83 Q. Yes.

A. Well, I should not be so determined upon my opinion in that case; certainly not.

Q. Well, now, you said just now that you never exported any waste of this kind?

A. Broken top.

Q. Well, you called it "waste of this kind"?

A. Of this kind? No; we never exported that.

Q. However produced, is or is not that as it is now waste, as you called it just now? Is it now waste?

A. Well, I don't really know how to define waste. As it is now I should call it waste. It is not fit for anything else.

A. Yes; I do.

Q. Are they not pieces of sliver of which the top is composed of short ends?

A. Yes; they are pieces of waste that is made in the process of spinning.

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A. Broken top.

Q. Well, you called it "waste of this kind"?

A. Of this kind? No; we never exported that.

Q. However produced, is or is not that as it is now waste, as you called it just now? Is it now waste?

A. Well, I don't really know how to define waste. As it is now I should call it waste. It is not fit for anything else.

Q. You know that this is produced from Botany wool?

A. Botany wool or colonial wool.

Q. And all waste which is produced from colonial wools—is it not designated by the term "Botany waste"?

A. Real waste is.

Q. It is called Botany waste?

A. Yes.

Q. Which, as you have told us, is in very great variety?

A. It is in very great variety waste.

Q. Did you ever export any waste of this kind anywhere, either to America or elsewhere?

A. I don't think we ever have; certainly not to America.

Q. Therefore you never bought any?

A. No.

84 Q. You don't know personally what it may be used for in this country, do you?

A. Well, I don't know personally for a certain thing. I believe it is used in the woolen districts for backing goods and that sort of thing.

Q. And for that purpose it is necessary to break it up?

A. That I could not answer.

Q. You don't know?

A. No.

Q. Do you know what the process of carding is?

A. Carding wool?

Q. Yes.

A. Yes.

A. Have you ever seen it?

A. I have certainly seen it, but I never studied it.

Q. You don't know that carding wool is principally for the woollen trade?

A. I always understood it was so.

Q. Do you know sufficient of carding to know that a top cannot be used without first being broken up?

A. No; I don't.

Q. You don't know that?

A. No; I don't.

Q. Are you quite sure whether you ever saw a carding machine or not?

A. Well, I am nearly certain. Yes; I have seen a carding machine in going round a place.

85 Q. You could not put a top through a carding machine, could you?

A. No.

Q. It must be broken up?

A. I don't know.

Q. If you have ever seen a carding machine you have forgotten what it is like?

A. I will not say that. I have walked through a place, but I have never paid very much attention to it.

Q. You have heard that broken top is used for clothing purposes in the woollen district?

A. Yes; I have.

Re-examined by Mr. READ:

Q. Do you know how the real waste is made? If you do not know I would rather you would say so.

A. I do know to a certain extent. Yes; I know there are various kinds of waste.

Q. The only reason I ask you the question is that you speak of "real waste" in answer to the question of Mr. Watson. Is what you call "real waste" what they call "broken top"?

A. There are so many various kinds of waste it is a difficult question to answer.

Q. I understand you bought waste from spinners?

A. Spinners and dealers.

Q. And from wool and waste dealers?

A. Quite so.

Q. Assuming that the 13 bales in question in this suit when sold by Mr. Knowles were in the form of top and subsequently
86 broken up by him to fill the order, are you able to state what the commercial designation of that product is or was at the time?

By Mr. WATSON:

Q. First of all you are able to say?

A. Certainly I am able to say.

By Mr. READ:

Q. What was it called?

A. Called broken tops.

Cross-examination by Mr. WATSON continued:

Q. But I understand you to say, Mr. Delius, that you never bought any broken tops?

A. We never did, Mr. Watson.

Q. And how do you know that the commercial designation of such an article that you never bought or dealt in is broken top?

A. Oh, well, although we have never bought them, we have had them offered to us many and many a time.

Q. What were they offered to you as?

A. Variously. I know they were offered to us as broken top.

Q. Do you remember that that is how they were called?

A. In most cases they were called broken top as far as I remember. Of course I may tell you I don't do all the buying of our firm.

Q. Can you charge your memory with the name of any single person who ever offered to you broken top?

87 A. Well, I don't remember anybody at present; at least I should not like to mention any name, at any rate.

Q. Which is it—you don't remember or you would not like to mention any name?

A. I am not perfectly certain about it; that is what I mean.

Q. Do you remember any other person besides those who have offered this material to you speaking to you upon the subject of broken top? I want to know who you have heard call it broken top.

A. We generally call it so throughout the trade.

Q. Tell us one person who has spoken to you and described it as broken top.

A. Various dealers in the town.

Q. I should like you to name one of them—one who has spoken to you personally and described it as broken top.

A. I dare say Mr. Greenwood has spoken to me about broken tops, as far as I can remember.

Q. Any one else?

A. Well, I should not like to give any more names.

Q. Do you remember any one?

A. Not for certain.

Q. When was it Mr. Greenwood spoke to you about broken top?

A. I should think somewhere in 1888.

Q. Was Mr. Greenwood offering you broken top?

A. We had broken top from him.

Q. From him?

88 A. Yes.

Q. And he described it as "broken top"?

A. So far as I remember; yes.

Q. Was it a short top?

A. Yes; they were all short tops.

Q. Don't you know it is a very common practice to break up short tops because of them thurning out shorter than they were expected?

A. No; I don't.

Q. Do you know that it was not the practice?

A. I never knew the practice.

Q. Do you ever buy any tops?

A. We buy tops.

Q. For exportation?

A. We export tops.

Q. Do you buy them for the purpose of exporting and not to deal with them in any other way?

A. We buy them for the purpose of shipment.

Q. You buy short tops.

A. Our tops are different from these (sample produced); our tops are more lengthy tops.

Q. What are short tops?

A. Tops short in the staple.

Q. Not so valuable as longer tops?

A. Certainly not.

Q. It may be that a dealer or comber having a top come out of

the comb shorter than he expected and which would not
89 suit your purpose would break it up for some other purpose?
A. It is quite possible.

Q. Throughout the market a short top is not so valuable as a long top, is it?

A. No.

Q. And it may be worth more broken up than sold as a top?

A. Well, I should hardly think that.

Q. It might be?

A. I should say not.

CHARLES EDWARD RICHARDS duly sworn.

Examined by Mr. READ:

Q. Where do you reside?

A. I reside at Ilkley.

Q. What is your business?

A. I am a merchant.

Q. What kind of a merchant?

A. Wool merchant.

Q. What is the name of your firm?

A. Stoddard, Lovering & Co.

Q. Are they merchants in wool?

A. We are merchants in wool and various other things.

Q. To what extent are you merchants in wool?

90 A. We are extensive merchants.

Q. How long have you been so?

A. We have done business in wool for a great many years; but in an extensive way it has been for the last six or seven years.

Q. Are you engaged in buying and selling it for domestic use and also for the purpose of exportation to America?

A. We purchase exclusively for shipment to the United States.

Q. Have you ever been in th business of breaking tops?

A. No, sir.

Q. Do you know what broken tops are?

A. Simply from hearsay.

Q. From your knowledge as a wool dealer you know what a top of wool is, do you not?

A. Yes.

Q. Do you ship wool in tops to America?

A. We do not.

Q. What kind of wool or in what form do you ship to America?

A. We ship principally, in the raw state, greasy wool, as it can be shipped to the United States.

Q. Have you ever seen any broken tops?

A. I have seen what have been called broken tops.

Q. Have they been offered to you for sale?

A. They have been offered to us for sale and declared by my buyer to be broken tops.

Q. Within what period were these broken tops offered to
91 you—commencing when and ending when?

A. I could not exactly give you the date.

Q. About?

A. I am doubtful whether they commenced in 1887 or 1888.

Q. But it is since then that these broken tops were offered to you?

A. It was when we first had the prospect of the business of orders for this class of stuff. There were samples offered to us which the gentlemen buying for the firm would not touch because he said they were broken tops.

Q. Were they offered to you as broken tops?

A. They were offered to us as waste.

Q. And you declined to buy them as waste because you were satisfied they were broken tops?

A. Yes.

Q. Would you be kind enough to look at the sample of wool on the table and state whether you are able to say what it is, to the best of your knowledge?

A. I do not consider myself competent to give an opinion.

Q. Do you know any person engaged in the business of broken tops?

A. I do not, excepting by hearsay.

Q. Are you able to remember who offered you these tops for sale?

A. Yes.

Q. Who was that?

A. J. W. Greenwood, of Halifax.

92 Q. Is he the only person who ever offered you broken tops?

A. I am not aware that we ever had anything else offered to us there was any doubt about.

Q. Have you any knowledge as to the shipment to America of broken top?

A. I have no knowledge.

Q. Can you tell us what is the commercial designation of that article?

A. I should call it waste.

Q. Why would you call it waste?

A. Because it cannot be used without going through the process of manufacture.

Q. What would you call a broken top?

A. I should call a broken top a top which had been broken up.

Q. Why would you call these thirteen bales which Mr. Knowles stated as top broken up by him waste?

A. Because I question very much whether the name "broken top" was ever used formerly. I really have no experience of this business of such a character to enable me to give evidence. This is merely opinion.

Cross-examined by Mr. WATSON:

Q. Your business in the wool trade has been confined to the purchase of wool in its raw state for exportation?

A. I have done business in this waste as well.

Q. Did you ever buy tops for exportation?

93 A. Hardly ever. I did buy once a sample for shipment; that is all.

Q. And you have shipped waste?

A. We have shipped the laps waste, yes.

Q. Are not laps very similar in appearance to this sample produced?

A. Yes; there is very little difference.

Q. Whatever this may once have been, having been broken up and being in this form, does it then become waste in every sense of the term?

A. Yes; that is so.

Q. And I understand that Mr. J. W. Greenwood, whom you have mentioned, offered to you that which he did offer to you as waste.

A. As waste.

Q. What Mr. Greenwood's motive may have been for breaking up the top you cannot tell.

A. That is not my business.

Q. Did you never hear that when tops came from the comb very short in staple or off color, or inferior in any respect, it is not an uncommon thing to break up a top and recomb it along with something longer or of a better color?

A. I have no information.

Q. Have you ever heard of it?

A. I have never heard anything of the kind.

Q. It may, for anything you know, be a very common thing?

A. It may.

94 Re-examined by Mr. READ:

Q. Do I understand you, Mr. Richards, to have been engaged in the shipment of an article like the sample to America?

A. We have been engaged in the business of shipping waste to the United States.

Q. That is not an answer to my question. (Question repeated.)

A. I am not an expert; therefore I have no knowledge.

Q. Examine it, and from the knowledge you have from your shipments please state whether you have been engaged in the shipment of an article like the sample to America.

A. It is difficult for me to say, because the matter has been entirely in other hands. I have been merely at the head of the firm and employed other people to do the work for me, and if I give my statement it must be with limited knowledge. I have seen some of this stuff, and if you were to pull me out a lot of stuff like this I should say most decidedly I have seen similar stuff to that—in appearance like this quantity in the shape of waste.

Q. I ask you whether you have bought in any quantity and shipped to America in quantities an article like the sample.

A. My reply to this is, I have never seen the stuff at all from beginning to end.

Q. You mean the stuff you shipped?

A. No; I have not seen it from beginning to end; therefore how can I give an answer.

Q. You have never seen the article you bought?

95 A. I have never seen the article I bought; it has never come inside our warehouse.

Q. Have you seen samples?

A. Yes.

Q. And the shipment you made was like your sample, was it not?

A. It was not always.

Q. Do you mean to say you sold goods according to sample and shipped goods that were not like the sample?

A. I mean to say we have shipped goods which, when they got to America, were not like the sample they were taken from.

Q. Was it better or worse?

A. It was not the article we bought at all.

Q. Are you able to state what kind of waste it was you shipped to America—what did it purport to be?

A. It was supposed to be all *bona fide* spinning waste as came from the spinner. That is what Stoddard, Lovering & Co. gave orders to their buyers to buy and buy only. Strict instructions were given to the buyer that he must buy nothing at all but what was *bona fide* spinning waste.

Q. Now, what is *bona fide* spinning waste?

A. *Bona fide* spinning waste, as I understand it, is the waste that is made in the process of spinning.

Q. That you understand to be spinning waste?

A. That is as I understand it.

Q. I understand you to have said, in the course of your examination, that these broken tops are waste?

A. Broken tops I consider waste.

96 Q. Did you ever buy them as waste?

A. No.

Q. Did you ever engage in the shipment of broken tops as waste?

A. No, sir.

Q. Do you know how long broken tops have been called waste here?

A. I have no knowledge.

GEORGE WILLIAM LUPTON duly sworn.

Examined by Mr. READ:

Q. Where do you reside?

A. At Saltaire.

Q. What is your business?

A. A wool merchant and top-maker.

Q. What is the name of your firm?

A. G. W. Lupton.

Q. How long have you been in the business?

A. I have been in business on my own account about 21 or 22 years.

Q. Do you deal in wool of various forms?

A. Yes.

Q. Will you kindly look at the sample on the table and tell me what is its commercial designation?

A. I should call it broken tops.

Q. Is that what it is called among the trade generally?

97 A. I should say so.

Q. How long has that article been known as broken tops?

A. Well, I have not known of it more than two or three years, not to speak of it in any quantity.

Q. But for the past two or three years have you known of it in large quantities?

A. Yes; I have heard of it in pretty fair quantities.

Q. As compared to the time previous?

A. Yes.

Q. What was it known as prior to that time?

A. Well, I have not come across it myself personally, unless in a very exceptional case, prior to that time.

Q. Would your business have brought you in contact with it if it had been made to any extent prior to that time?

A. I almost think so.

Q. Do you know how it is made—have you ever seen it made?

A. No.

Q. Do you know from your general knowledge of the business and from an inspection of the sample itself how it is made?

A. I should say from an inspection of the sample it has been made by hand.

Q. When you say "made by hand," what do you mean, Mr. Lupton?

A. I mean that the top has been broken in lengths by a manual process.

Q. Do you know for what purpose this article has been chiefly manufactured within the last two or three years?

98 A. Well, I only know from hearsay and surmise.

Q. What is the extent of your knowledge and what do you know about the subject?

(The question was objected to by Mr. Watson on the ground that the witness has already stated that he knows nothing except by hearsay and surmise, and that this is an invitation to a general dissertation upon the question which is for the court and for the jury; also that it is a general "fishing" inquiry which should not be put to witness. The question was then repeated by Mr. Read.)

A. I have had quantities of this material offered as broken tops, because, I suppose, they have not been able to ship it.

Q. Do you know how long it has been exported from England to the United States?

A. The latter end of 1888 or the beginning of 1889 is as far back as I can feel sure about it.

Q. Prior to that time what was it used for, or was it made prior to that time?

A. Prior to that time I can hardly say I came across it in any quantity.

Q. Are you able to say, from examination of the sample on the table, whether that wool has been scoured before it was made into top?

A. Yes; it must have gone through the washing processes.

Q. Do you know what a Botany lap is?

A. Yes.

Q. What is it?

99 A. A portion of top which gets lapped round the roller in the process of spinning, both, to a certain extent, in spinning and drawing; it is torn off.

Q. What is it called when it is collected together?

A. It is called laps.

Q. And what is done with them?

A. It is a regular article of trade.

Q. How is it collected together?

A. Spinners here, as a rule, sell it by contract for 3, 6, or 12 months, and you take what they produce for that time and they deliver it as it accumulates.

Q. I mean how is it collected together?

A. The dealers here collect it principally. It is collected by the waste dealers, who go round to the mills and make contracts with the mills to take what they produce.

Q. Then what do they do with it—put it into bags?

A. They put it together and sometimes sort it—the clean from the greasy.

Q. Then what do they do with it? Do they sell it loose in that form or put it into bags and sell it in bags?

A. It is put into bags.

Q. Collected together and the clean put into one bag and the dirty into another?

A. Yes.

Q. And sold in that loose form, is it?

A. Yes.

Q. Have you dealt in an article like the sample?

A. Yes.

100 Q. When?

A. Repeatedly during the last two years.

Q. Did you buy it here or elsewhere?

A. Generally here.

Q. In Bradford?

A. Yes.

Q. What was the commercial designation of the article which you so bought?

A. Well, I have heard it designated probably under three heads—as laps, as waste, and as broken tops.

Q. Has an article like the sample been dealt in to any large extent as an article of merchandise for a longer period than that you have mentioned?

A. Not to my knowledge. Certainly not beyond 6 or 12 months longer, to my knowledge.

Q. Not 6 or 12 months longer, to your knowledge, than that which you have stated?

A. No.

Q. Have you ever shipped any to the United States?

A. No.

Q. You stated that within the last two years you have dealt in an article like the sample, and it had three names, I think you said—Botany laps, waste, or broken tops?

A. Yes.

Q. Why do you call it a Botany lap?

A. I should not call it a Botany lap. I should call it what it was.

Q. A broken top?

101 A. What is was—a broken top. I mean that if it was a lap I should call it a lap, and if it was a top I should call it a top.

Q. You say another name the article has had within the last two or three years was waste?

A. Yes.

Q. Had it had that name for any longer time?

A. As I told you before, I had hardly ever come across it previous to that; it was a very, very, rare, exceptional case.

Q. You would have come across it, would you not?

A. Probably, as I have in the last two or three years; it is in the way of my business.

Cross-examined by Mr. WATSON:

Q. Are you familiar—I mean practically familiar—with the processes of combing and spinning?

A. Only superficially so.

Q. But I dare say you know sufficient of it to know that in both processes laps are made?

A. Yes.

Q. In the case of combers' laps, they would not be mixed with anything else, would they?

A. No; not where there were purely a combing establishment and no spinning.

Q. In the combing the laps would be kept separate?

A. In the case of spinners the laps are very often mixed with the other waste produced in the process.

102 Q. They are not mixed with the spinning waste, but mixed with the waste which is called intermediate—the roving?

A. Yes.

Q. That is to say, before it becomes yarn?

A. Before it becomes yarn.

Q. You have described to us a system of contracts by wool and waste dealers, with spinners for their waste, extending over periods

of three, six, nine, or twelve months, as the case may be. There is a very large amount of combing and spinning done in Bradford and district?

A. Oh, yes.

Q. I should not be wrong if I said there is an enormous amount of spinning done?

A. No.

Q. And very large quantities of this kind of waste—laps, spinners' waste, combers' waste, and so on—is produced?

A. Yes.

Q. Are there not in Bradford a large number of wool and waste dealers whose business it is to deal in waste of this kind?

A. Yes.

Q. I believe some of the waste dealers confine themselves entirely to waste and don't deal in wool at all, or comparatively little?

A. Yes; some of the smaller ones do. They may buy a few noils.

Q. Noils are waste?

A. In one sense.

103 Q. And is it not a fact that these waste dealers keep a staff of women and other laborers for the express purpose of sorting the waste?

A. Yes.

Q. Making it into various classes and qualities?

A. Yes.

Q. And so selling it again?

A. Yes.

Q. Don't you know that one sort constantly being produced by these waste dealers is the laps and better kinds of waste?

A. Yes.

Q. When sorted are not these laps packed up into bags and sold as an article of merchandise?

A. Yes.

Q. In large quantities?

A. In pretty fair quantities.

Q. Looking at the sample which has been produced, tell us whether the laps produced by the combers and spinners are not similar. Apart from the process of production, are they not similar to this sample?

A. They are very similar if you will take isolated portions of the sample.

Q. That is to say, if you take any one portion of the sample?

A. If you take an isolated portion of the sample they are very similar, but if you take it in bulk it is very rare or a difficult

104 thing to get a large bulk of laps of that description without a variety. It is very difficult to get it without soiled pieces in it and an appearance of oil about it. You cannot get the same nice look.

Q. But save that these are a large quantity of comparatively uniform quality and color?

A. And cleanliness.

Q. Are not these almost identical with the combers' and spinners' laps?

A. They are with combers' laps, with the exception I have given you.

Q. Then your judgment that these are broken tops rests upon the fact that you find them in large quantities together of one uniform quality and color?

A. Yes; but it would be a very difficult thing to show me a sample like that, representing any quantity of laps. I never saw one like that, representing any quantity of laps, with the same regularity.

Q. Assume, for the purpose I am now going to put to you, that neither the United States Government or anybody else have the slightest fault to find with the process, in point of fact in this state is this waste or not?

A. Yes; under the form or shape that it is in now I should be inclined to call it waste.

Q. Then, apart from any object which has induced anybody to reduce this—assuming that it was broken top, if you are right—whatever that object may be in the state it now is, it is, in point of fact, waste?

A. In the state it now is it is only useful—practically use-
105 ful—for the same purpose as laps. What I have of that now I sell it the same as my laps.

Q. But are you not in the habit of getting large quantities of wool combed on commission?

A. Yes.

Q. Does not the commission comber return to you not only the top, but the noils and the laps and the waste?

A. Yes.

Q. It is your property?

A. It is my property.

Q. And, in addition to the laps and waste which are produced from your own wools, I believe you also buy largely from other persons?

A. Yes.

Q. Has this ever happened to you, that a top has come to you from your comber which has been very disappointing to you both in length of staple and in color?

A. In color it has, but not often in the length of staple.

Q. I dare say you have sometimes been, like your neighbors, afflicted with a short top?

A. I should not like to say I had not.

Q. And I dare say you have experienced some difficulty frequently in inducing them to believe it was a longer one than it was?

A. Oh, yes.

Q. And I dare say sometimes you have been ready to dispose of a top of that description for the best price you could get
106 for it?

A. Well, we would have to do.

Q. Have you ever known times when the noil and waste was worth more than the top?

A. No.

Q. Have you known times when the noil has been worth more?

A. Not any more than the top. I have known the time when a noil has been worth more than the wool it was made from.

Q. Did you ever have a top recombed with the addition of something longer in it?

A. It is quite possible, but I cannot speak positive.

Q. You know that is not an uncommon thing?

A. No; not at all.

Q. In order to lengthen the staple of the top?

A. Yes.

Q. And for the purpose of your customers who have a peculiar fancy, perhaps. On those occasions has a top been broken up before it has been put into the machines along with the other wools in order to make them look better?

A. It has not been broken up, but what is called regilled. It is put through the gilling boxes. Two tops or three tops, whatever you want well blended together or regilled together; they pass over the machine.

Q. And the top is opened out?

A. It is opened out, but not severed.

Q. It is opened out in the sliver?

A. What I mean to say the staple is not separated.

107 By Mr. READ:

Q. It is not broken?

A. It is not broken.

By Mr. WATSON: I understood you to say, although not in large quantities, you had seen tops broken before the period you speak of—the last two or three years?

A. Yes.

Q. Tell us what circumstances led to their being broken on these occasions.

A. The circumstances I can recollect have been where we will say the tops have been in stock a long time and they have not been well warehoused; they have not been moved and the bags containing them may possible have been on a damp floor, and they have come to manipulate these tops for business purposes; they found right underneath the bale the tops had got rotten and become tender by age and by being badly taken care of and have been, to a certain extent, discolored, and, therefore, spoilt for the purpose for which they were originally intended; and in that case, in those mills, they will employ a little lad, at a small wage, and tell him to break the tops up and throw them into the laps. If there is a large quantity of them they will make them into one parcel and not mix them with the laps, but sell them as they are.

Q. In that case what are they sold as?

A. They would not be sold as anything except under the designation of laps or waste.

Q. Now, during the period that you have spoken of—the
108 last two or three years—you have seen more of the broken top than you had done before?

A. Yes.

Q. And you bought some of it, any quantity?

A. Pretty fair.

Q. Well, about what?

A. Perhaps 10 bales at a time.

Q. How many occasionally?

A. Well, I have had, perhaps, 40,000 lbs. to 50,000 lbs. offered. That is, perhaps, as big an offer as I can remember having had in one lot.

Q. That is, 10 or 15 bales?

A. No; it is far more than that.

Q. You have had 10 bales at a time, and about how many times—about half a dozen times?

A. A few weeks ago I had 20,000 lbs. offered and I bought, perhaps, 10,000 lbs. or 12,000 lbs.

Q. How many bales altogether have you bought? Have you bought 100 bales altogether?

A. Yes; I dare say I have.

Q. And I presume you sold it again?

A. Yes; we may have a few bales, but nothing of any moment.

Q. You have shipped them?

A. No.

Q. You don't happen to know what they are used for, do you?

A. They are my home-trade customers I have sold them to
109 and they are woolen manufacturers.

Q. May I ask what you describe them as in your invoices to your customers?

A. I would not be certain.

Q. Would you undertake to say you did not describe them as Botany waste?

A. I will not be certain, because I have not personally described them myself. My invoice clerk would describe them, and I could not say what he has done.

Q. But they may have been described by you to your customers as Botany waste?

A. Quite possible.

Q. Were they, in point of fact, anything else but Botany waste?

A. Not in the shape they were in.

Q. And were they not in the same shape as the sample now produced?

A. Yes; very similar.

Q. Now, in point of fact, would it not take an expert—and I may say a clever expert—to tell the difference between this sample produced and the Botany lap produced by the spinner in the way you have described?

A. Well, any man who understood his trade would be able to tell them in bulk, but if you gave him a small hand sample it may be a difficult thing for a man to tell—to swear to it.

By Mr. READ:

Q. But he could tell in bulk?
A. He could tell in bulk.

110 By Mr. WATSON:

Q. We have it now from you that you may yourself probably have sold a hundred bales of this broken top, and possibly as broken waste, during the last two or three years, and I believe there are large numbers of merchants engaged in this same trade in Bradford, in the same trade as yourself?

A. There are not many who do what you may call a large business, but, of course, it is vague the word "many," there are ten or a dozen, perhaps, who do a considerable business.

Q. And how many who do an inconsiderable business, are not their name legion?

A. Well, you might almost say so.

Q. How many small waste dealers have we in town who make these contracts such as you have been speaking of—speaking generally, how many?

A. Well, I forget. I dare say there will be, perhaps, 15 or 18 people who do enough business to enter into these contracts. The very small men would not enter into these contracts.

Q. The larger men do not enter into these contracts? For instance, you don't?

A. We do, partially. For instance, there are a very great many wastes made, and in some mills they will only sell the whole bulk together. There are many classes of waste I don't touch at all, never have them in my place. If I go to a mill and want to make a contract with a man he says, "You have got to take everything." I say, "Who is buying your waste?" He said, "So and so,"
111 and I say, "Now, I will give you a commission on two or three qualities," or I will deal with the other man who takes the bulk.

Q. The question I want from you is, that what you have done in the last two or three years forms a very small proportion of the trade of the town?

A. What I have taken; yes.

Q. A very small proportion—a mere fraction?

A. I would not say a mere fraction, but there are many others who do as much.

Q. And far more who do less?

A. Far more who do less.

Q. Now you say that this broken top—that which you now say is broken top has been described sometimes as laps, sometimes as waste, sometimes as broken tops. Will you undertake to say you ever saw an invoice either of your own or of anybody else describing it as broken top?

A. I should not like to say that I have.

Q. Well, then, I think I may go further and ask you, don't you think that in every case, so far as the invoice is concerned, whether

for the home or the foreign trade this material is invariably described either as Botany laps or Botany waste?

A. Yes; I should think it is generally described as that.

Q. Either Botany laps or Botany waste?

A. Yes; either one or the other.

Q. You say that sometimes this has been spoken of as broken tops?

A. Yes.

112 Q. When the words "broken tops" were used I presume they were used in conversation?

A. Yes.

Q. Now, when they were so used, was anything more meant than to describe the article from which the Botany waste or the Botany laps of the invoice had been produced?

A. No; I don't think so.

Q. Now let me ask you this, are not those three terms, as applied to this article, "broken tops," "Botany lap," and "Botany waste," synonymous?

A. They represent an article which is used practically for the same purpose on this side.

Q. For all practical purposes are they synonymous?

A. The word "waste" would hardly be synonymous. By the word waste we, as a rule, in speaking of it in Bradford, allude more frequently to thread waste; that is more generally understood. In the trade, when we deal in laps, we designate them as laps, not as waste; but more generally, when we speak of waste, we mean thread waste.

Q. But Botany laps are very often invoiced as "Botany waste"?

A. Oh, yes; I dare say they are.

Q. And in that sense, at all events, are the words "broken tops," Botany laps, and "Botany waste" synonymous?

A. In that sense.

Q. Have you sold more Botany laps made out of tops by breaking tops during the last two or three years than formerly?

A. Oh, yes.

113 Q. And, as your sales have been entirely in the home trade, may I take it there has been a greater demand in the home trade for this class of thing than before?

A. Well, it has been a comparatively new demand, because it is an article we have not had an opportunity of dealing in largely before the last two or three years.

Q. You mean a new demand in the woollen trade?

A. I mean to say where I could offer a man today 20 bales of this stuff five years ago I could not have offered two.

Q. But the demand, from whatever cause, from the home trade has increased?

A. Yes.

Q. And may I take it if there is a demand from the home trade, the woolen trade, which it answers your purpose to supply, that you get a better price for them than you can as a top?

A. No; we sell them at a less price than the top to the woolen trade.

By Mr. READ:

Q. You mean here?
A. Yes.

By Mr. WATSON:

Q. If that be so, how do you account for the top being broken up for the purpose of being sold to the woolen trade, if you sell it at a less price than you could get for it without being broken up?

114 A. It is only where we are able to get lots that we can sell at that price, when the home trade will take it. For instance, what I mean to imply is I could make an unlimited quantity of tops, and I could make them today, but I could not get the cost price for them.

Q. Given the top in existence, which it must be before it can be broken up, you can get a certain price for it?

A. Yes.

Q. And after it is broken up you sell it at less price than if it is unbroken?

A. I can only account for it that it has been broken up for another purpose, and they have to take a price for it then that it will sell at for the home trade; that is the only way I can account for it.

Q. In that case does it not come to this, that a top, as a top, is in fact worth less money because it is not saleable as a top, and that you can get more money for it from the woollen trade to be broken up?

A. Yes; but probably it would not be broken up at the price we can get for it, you know.

Q. I don't quite follow you.

A. I mean to say I do not know where a top can today be got or broken up to sell at the price that this article is saleable here.

By Mr. READ:

Q. You mean here in England?
A. Yes.

By Mr. WATSON:

Q. And therefore you are not getting any now?

115 A. No; I could not lay my hands on much today.

Q. I don't want to speculate; I want to come to the actual facts; you know you bought about 100 bales of broken top which has been sold to the home trade.

A. Yes.

Q. Do you mean to say that the price at which you sold it to the home woolen trade for use here has been less than the top was worth before it was broken at that time?

A. Yes; in probably all cases except one or two cases where there was perhaps a rise.

Q. You mean to say that you have sold it for less than the tops were worth?

A. Yes.

Q. Tell us why the top was broken up.

A. I should say the top was broken up for exportation.

Q. You should say?

A. Yes.

Q. Don't you know?

A. I know in this sense that tops have been broken up, but if you were to say to me, "On your oath, did you see that these tops had been broken up," I could not say I did. But still I know, as far as one man can know, in fact that tops have been broken up.

By Mr. READ:

Q. For exportation?

A. For exportation.

By Mr. WATSON:

Q. And still sold to you?

116 A. Yes, but not at the same time. What I bought a short time ago may probably, for anything I know, have been broken up months ago and they are not saleable probably for the purpose for which they were broken up.

Q. The demand in the worsted and woolen trades is very often not the same?

A. Oh, no; it fluctuates.

Q. The woolen trade may be brisk and the worsted trade may not be so?

A. Yes.

Q. In that case would it not pay to break up a top, especially an inferior top to be sold to the woolen trade?

A. There might be occasional instances for doing it; I think they would be rare, because it has to come into competition with the wool. They can only use this to a certain extent in competition with the wool in the woolen trade.

Q. And that would depend upon the state of the wool market?

A. Yes.

Q. And upon the foreign wool market?

A. Undoubtedly.

Re-examined by Mr. READ:

Q. Mr. Lupton, when the product of the mill is bought in the way you have described for six months or a year, what is it called?

A. It is called waste; there are various classes of waste.

117 Q. When you make a contract for the whole product, what is that product called?

A. It is called waste.

Q. Has always been called waste, has it not?

A. Yes; to my knowledge.

Q. Did you ever hear it called broken tops?

A. No.

Q. How long has it been that among merchants in England the words "Botany waste," "Botany laps," and "broken tops" have been considered synonymous terms?

A. To my knowledge, perhaps two or three years.

Q. Any longer?

A. Not longer to my knowledge.

Q. How long did I understand you to say that you had been in the business?

A. Over 20 years.

Q. I understood you to say you sold this stuff--this article--less than its cost?

A. Yes; except in a possible case or two where there has been a rise in the market.

Q. Are you able to give a reason why it sold for less than its cost?

A. Well, because it has been put into that process, I suppose, for a purpose for which it has not been ultimately saleable for.

Q. From your knowledge of the business, are you able to state for what purpose tops have been broken up in England and in this district for the past two or three years?

118 (Mr. Watson objected to the question and said that the only evidence upon that question which the witness ought to be asked to give must be evidence of instances which have come under his own knowledge, and also that there is an endeavor by this question to ask the witness to speak to rumors and not to facts.)

Question repeated.

A. I do not know of any purpose except for exportation.

By Mr. WATSON:

Q. Do you know of any case in which you can give use, name, chapter, and verse of any person who has broken any up for exportation?

A. I can give you the name of nobody having broken any up to my knowledge, but——

(Mr. Watson objected to witness adding a speech on to his answer.)

By Mr. READ:

Q. Did you completely finish your answer to Mr. Watson's question?

A. If I considered that Mr. Watson thought that enough, I should have done, but I considered Mr. Watson expected me to prove my statement, and that is the only addition I was making, but I should have volunteered no further answer if I thought Mr. Watson considered that sufficient.

Q. Why do you *that* that it was made for exportation only within the past two or three years?

A. Well, I simply say that because it has been packed; it has been press-packed in bales which would not be used for the
119 home trade.

The hearing was adjourned till Tuesday, the 8th July, at 11 o'clock, at the same place.

Hearing resumed at 11 a. m., July 8th, 1890, Victoria hotel, Bradford.

Mr. Read appeared for the plaintiffs.

Mr. Watson appeared for the defendants.

RICHARD BOULEY NICHOLLS duly sworn.

Examined by Mr. READ:

Q. Mr. Nicholls, you are connected with the United States consulate in this town?

A. Yes.

Q. In what capacity?

A. As chief clerk.

Q. How long have you been connected with the consulate in that capacity?

A. About seven years.

Q. As such chief clerk what have been your duties within the last seven or eight years?

A. Principally to attend to the entry of invoices of goods exported to the United States.

120 Q. As such chief clerk are you familiar with the quantities of wool waste that have been declared at this consulate within, say, the last three years?

A. Yes.

Q. For exportation to America?

A. Yes.

Q. Will you kindly tell me the quantity of wool waste that was declared at your consulate for exportation to America in November, 1887?

A. In November, 1887, the quantity was 69,648 lbs.

Q. Now, what was it in November, 1888?

A. 334,168 lbs.

(NOTE.—Mr. Watson states he does not find witness' name in the order and does not know how far he ought to be examined; but, having made this remark, makes no further objection, but leaves the parties in America to deal with it.)

Q. What was it in December, 1887?

A. 16,995 lbs.

Q. And in December, 1888?

A. In December, 1888, 407,776 lbs.

Q. What in January, 1888?

A. 54,114 lbs.

Q. And in January, 1889?
A. 530,416 lbs.
Q. In February, 1888?
A. 49,331 lbs.
—. And in February, 1889?
121 A. 531,198 lbs.
Q. Now, Mr. Nicholls, are you familiar with the article that was exported from this country through your consulate in 1888 as wool waste?
A. Yes.
Q. Do you know what broken tops are?
A. Yes.
Q. You have seen them?
A. Yes.
Q. Will you be kind enough to look at that sample on the table and state whether you are able, from your experience, to say what it is?
A. I should state that it is broken top.
Q. Mr. Nicholls, state what your experience is and to what extent you have seen samples of waste and broken top.
A. The invoices of goods that are declared at the consulate of goods shipped to the United States were represented by samples. In every instance we require a sample. From those I have been able to compare them.
Q. From your experience, are you able to say how long it has been the practice to ship from Bradford an article like the sample?
A. From about the latter end of 1888.

By Mr. WATSON:

Q. Will you tell me what you are looking at?
A. At the report that is made by the consulate.
Q. What date?
A. March 19th, 1889.
122 Q. To whom?
A. To the Government of the United States.
Q. From this consulate?
A. Yes.

By Mr. READ:

Q. In what form was wool shipped to the United States prior to that time, wools in various forms?
A. It was shipped as raw wool and as waste.
Q. Were there any other forms in which wool was shipped to the United States, other than the two you have mentioned, from this district?
A. Not that I remember.
Q. And what was the character of the waste that was shipped prior to that time?
A. Principally thread waste or yarn waste.

Cross-examined by Mr. WATSON:

Q. Are you an American or an Englishman?

A. I am an Englishman.

Q. Have you ever been practically connected with the Bradford trade?

A. I have been connected with the consulate for the last seven years.

Q. Have you ever been practically connected with the Bradford trade?

A. No, sir.

Q. In no department?

A. No.

123 Q. Is the experience to which you have referred as entitling you to give the opinion you have expressed experience entirely confined to the samples you have seen pass through the consulate?

A. No.

Q. What other experience have you had?

A. I have seen samples of various classes of waste outside of the consulate.

Q. Where and when?

A. At various times and in various forms.

Q. Within what period?

A. Within the last five years.

Q. And for what purpose?

A. For the purpose of examination and comparing.

Q. Comparing with what?

A. With samples that have been received at the consulate.

Q. What was the object of the comparison?

A. To ascertain whether or not the goods were as represented to be.

Q. Am I to understand this: That on occasion- when samples had been presented to the consulate to accompany a declaration you have gone out to different places of business in the town to make inquiries as to the genuineness of the sample or the accuracy of the description? Is that what you have done?

A. If we have any suspicion.

A. I don't ask why you did it; I am asking if that is what you did; never mind whether you have suspicion or not.

123½ A. Will you repeat your question, please?

Q. Am I to understand this: That on occasions when samples had been presented to the consulate to accompany a declaration you have gone out to different places of business in the town to make inquiries as to the genuineness of the sample or the accuracy of the description. Is that what you have done?

A. On occasions.

Q. And in that way you have obtained some experience which you think justifies you in giving an opinion on this sample?

A. That is so.

Q. Did you ever see a top unbroken?

A. Yes.

Q. On those occasions?

A. Yes.

Q. Now, has not all that occurred within the last two years; did you ever before the last two years compare any samples which was presented to the consulate with any top in any place of business?

A. Yes.

Q. Did you on those occasions or on any of those occasions find a sample presented to you very similar to the top if it were broken up?

A. Yes.

Q. Has that happened occasionally during the whole five years you have spoken of?

A. Towards the latter end of the five years.

124 Q. How much of the latter end?

A. The last two or three years.

Q. I ask, has not that occurred from time to time during the whole of the five years?

A. It may have.

Q. I think you said that the waste which was exported formerly was mainly thread and yarn waste?

A. Yes.

Q. Was not there a considerable proportion of waste which was neither the one nor the other?

A. No; not that I remember.

Q. Was the waste which you observed mainly of one description?

A. Yes.

Q. Thread and yarn waste?

A. Thread and yarn waste.

Q. Were they any Botany laps?

A. What part of the time?

A. In any portion of the time.

A. Botany laps within the last three years; two or three years.

Q. Will you undertake to say you had any Botany laps before the last two or three years in your time?

A. If there were any it was a very small quantity.

Q. Will you undertake to say you have not had them?

A. No.

Q. You never saw the bulk of any, did you?

A. No.

125 Q. You are now speaking entirely of the samples which were produced to you at the office?

A. Yes.

Q. What are the sizes of the samples?

A. They vary in size.

Q. Tell me, about.

A. Probably from half a pound to a pound weight.

Q. Do you find in any of the samples several different kinds of waste?

A. In some cases we did; in others we did not.

Q. Did you ever find any portion of a sample anything like one of these pieces in the sample produced?

A. Yes.

Q. What proportion that bore the whole bulk you never had any means of ascertaining?

A. No further than was represented by the sample.

Q. Of whatever the sample consisted, was it not invariably declared under the head of waste?

A. As waste.

Q. In general terms?

A. Yes.

Q. Anything that was not pure wool was declared under the general head of waste?

A. Yes.

Q. Have you with you the statistics of the quantity of the waste exported to America from Bradford during the whole of the period you have been at the consulate?

A. Yes.

126 Q. Have you found that the quantity has varied somewhat according to the state of trade in this country and in America?

A. It did not vary to the same extent as what it did from 1888 to the present time.

Q. But it did vary?

A. Well, I could not answer without referring to the figures; it was very trifling if it did.

Q. Have you ever seen machinery at work actually producing waste?

A. Yes.

Q. To what extent—have you seen it often?

A. Occasionally.

Q. How often and under what circumstances?

A. Whenever I have had an opportunity of going into a mill.

Q. Do you profess to have a practical knowledge of the mode in which waste is produced?

A. No.

Q. Waste of any kind?

A. You were referring to this (sample produced) at the time?

A. I am not referring to this particular waste.

A. I know the way thread waste and yarn waste are produced.

Q. Tell us how it is produced.

A. It is the refuse from spinners.

127 Q. I know it is from the spinners, but do you know the mechanical processes by which it is produced?

A. Yes.

Q. Tell us, if you know; if you don't, say so. Do you profess to have a practical knowledge of the mode in which waste is produced?

A. I will reply to that question now.

Q. And that answer would apply to all kinds of waste?

A. Yes.

By Mr. READ: Do you know how the commodity like the sample is produced?

A. Yes.

By Mr. WATSON:

Q. Of your own knowledge?
A. I have never seen it produced.

By Mr. READ:

Q. Do you know how it is made?

(Mr. Watson objected to the question on the ground that the witness, having stated that he has never seen the process himself, cannot answer the question in speaking about hearsay. The question was repeated by Mr. Read.)

A. It is made from tops.
Q. The figures that you gave as to the shipment of waste from Bradford, by whom were they ascertained?
A. By myself.
Q. And how?
A. From the invoices that were presented at the consulate.

128 THOMAS LEAVENS RENTON duly sworn.

Examined by Mr. READ:

Q. Mr. Renton, where do you reside?
A. In Bradford.
Q. Where?
A. No. 2 Oak Villas.
Q. What is your business?
A. A wool merchant.
Q. What is the name of your firm?
A. Thomas Renton & Co.
Q. How long have you been in the wool business?
A. 30 years.
Q. As a general dealer?
A. As a general dealer.
Q. Will you kindly look at the sample produced by me now on the table?
A. Yes.
Q. State, if you please, what it is.
A. My own opinion of that is that they are broken tops. I don't see an ounce of waste—proper waste.
Q. What is its commercial designation?
A. Broken tops.
Q. How are they produced?
A. I should say by hand.
Q. When you say "by hand" what do you mean?
A. I mean that people are employed to take a ball of tops and break off pieces and throw them into the bales.
129 Q. How long has it been the practice in England to break tops in that manner?

(Mr. Watson objected to the question on the ground that no practice had yet been spoken *to*, and that before the time at which

the practice has existed can be shown there must first of all be evidence of the existence of the practice which, he says, had not yet been given.)

A. I should say within the last three years. Perhaps Mr. Watson may know I have had something to do with the consulate now for six or seven years.

Q. You have been the American vice-consul here for the last six or seven years?

A. Yes; and this has been my department.

Q. For what purpose are they made?

(Mr. Watson objected that the witness should not be asked in general terms without giving instances.)

A. My answer to that question would be that these have been broken and sent to the States as waste.

Q. Assuming that the 13 bales in question in this suit when sold by Mr. Knowles were in the form of top and subsequently broken up by him to fill the order, are you able to state what the commercial designation of that product is or was at that time?

A. After it was broken up?

Q. Yes.

A. Well, I should call it broken tops.

Q. And was that what it was called, commercially speaking, at the time?

A. Yes; certainly.

130 Q. How long had broken tops similar to the sample produced been bought and sold as an article of merchandise in the English market?

A. Do you mean for export?

Q. My question was general.

A. I never heard of it before it came to go as waste.

Q. You never heard of it before until it came to go as waste?

A. Until it came to go as waste.

Q. When was that?

A. As far as I remember, we began to find it out in 1888.

By Mr. WATSON:

Q. "We" began to find it out?

A. Yes; I mean at the consulate.

By Mr. READ:

Q. And prior to that time you never heard of it as an article of commerce?

A. I never knew of such a thing. It would be distinct loss for anybody to break them up for this trade.

Q. Prior to that time in what form was wool shipped to the United States?

A. As pure waste.

Q. And in what other forms?

A. As raw wool, as sorted wool (that is, matchings), and I should say also as noils.

Q. Have you ever dealt in broken tops like the sample?

A. Yes, sir; I have.

Q. When?

131 A. It was some time last year; towards the end.

Q. What were the circumstances under which you dealt in them and what was the quantity you purchased?

A. One bale.

Q. What did you do with it?

A. We sold it to a firm of foreign yarn merchants—Lindner & Holzhausen.

Q. That is the only time you ever dealt in it?

A. Yes.

Cross-examined by Mr. WATSON:

Q. Mr. Renton, when you were telling us that you lived at 12 Oak Villas and that you were a wool merchant, why didn't you also tell us you were the vice-consul for America?

A. Well, I didn't think it was necessary; I supposed you would know, really.

Q. What sort of wool do you generally deal in in your private trade—in the trade of your firm?

A. We deal in all kinds of English wool, except, perhaps, lustre, and we deal in Botany, cross-breds, and the finer marinos as well. Unti- three years ago we used to deal in tops and noils; that we gave up.

Q. Were you top-makers?

A. Yes.

Q. In any considerable way?

A. Well, at times. We used to be guided by the times, you know.

Q. Did you buy, in addition to making, tops to any con-

132 siderable extent?

A. We did not buy tops to any considerable extent.

Q. I may take it that your trade experience of tops was confined to the tops that you made yourselves from wool that you bought in London?

A. Yes.

Q. And probably you made generally the same line of tops, did you not?

A. No, sir; we used to make what we call cross-bred tops, beginning at the quality of 36's and we went up to 70's in marinos.

Q. Perhaps I have not made myself understood. The various qualities of tops that you have made, I believe, you generally endeavored to continue?

A. Yes; we did so.

Q. To maintain your standards?

A. Yes.

Q. And I daresay in most cases you would know the customers who are likely to buy them from you?

A. Yes.

Q. I think I am correctly informed that you had customers for whose wants you catered in that way?

A. Yes; certainly.

Q. And those customers would be users—consumers?

A. Yes; spinners.

Q. You were not in the habit of exporting the top in any form?

A. No; certainly.

133 Q. Or the waste?

A. No.

Q. Everything was sold in the home market?

A. Yes; in the home market.

Q. Is your experience of exportation confined to your experience at the consulate?

A. It is. We don't do anything direct.

Q. Did you generally see the samples which accompanied the declarations?

A. Well, I should not say generally, but very often I did.

Q. Has the last witness accurately described them as half to a pound samples?

A. Yes; I should think so.

Q. Have you not found both in your trade experience and in your experience at the consulate that waste or articles coming under the definition of waste have ranged from thread waste up to laps which bear a very close resemblance to the sample produced?

A. I can only speak of my experience at the consulate. In my own business I never saw any of these.

Q. You must have had laps?

A. Why, in my trade we don't get laps; we get card waste.

Q. The comber does not put them on the cards at all?

A. They are carded first and then combed.

Q. There are laps after the combing is finished?

A. You are quite wrong, sir.

Q. You never had any laps in your own trade?

134 A. No; never.

Q. And therefore what you have got from the comber has borne no resemblance to these?

A. Not the slightest. It is worth about 2d. or 3d. per pound.

Q. You have never had any in your own trade?

A. No; never.

Q. What happened when the tops have left you you don't know?

A. No, sir.

Q. What do you mean by the phrase that you have used two or three times in your examination, "commercial designation"?

A. Well, what I mean with regard to commercial designation, giving it the term broken tops, is I know from my own experience and knowledge that these are tops simply, broken either by hand or by machinery.

Q. Do you draw no distinction between the fact that this is, as you allege, broken tops and the words "commercial designation"? The question that was put to you by Mr. Read was, "What is the commercial designation?"

A. Yes.

Q. And you said they were broken tops?

A. Yes; that is the ordinary term.

Q. I ask you if you draw no distinction between stating the fact that they are in fact broken tops and the definition of the word "commercial designation." There is no difference between the two?

135 A. No; certainly not. It means they are broken tops.

Q. Did you ever see an invoice for broken tops?

A. I should not say that I have, because I never had any invoice.

Q. Did you ever see any invoice of anybody else calling them broken tops?

A. No, sir. They are sharp enough not to do that.

Q. Then what do you mean by "commercial designation," I ask you again?

A. I mean what everybody understands.

Q. Then I am an exception.

A. I mean everybody in the trade.

Q. I think I know my dictionary, at all events. Commercial is one thing and the fact as to what it is is another.

A. Well, that is the common term for it—"broken tops."

Q. Did you ever know an instance in which broken tops were bought or sold?

A. No, sir, because my experience is, so far as it goes, when I sold broken tops they had been invoiced to me as "laps;" but I know they had come from America—been returned.

Q. What did you invoice them as?

A. I could not from memory say, but our invoice will show it.

Q. What do you mean by "commercial designation," I ask you again?

A. I mean the ordinary term for describing anything in the shape of wool in my trade.

136 Q. You don't mean in invoices?

A. No.

Q. You don't mean in correspondence?

A. As a rule——

Q. Well, do you?

(Mr. Read objected to the interruption of witness' answer by Mr. Watson.)

Q. I am entitled to an answer to the question—"You don't mean in correspondence?" Will you kindly answer the question first?

A. In correspondence we should not call them broken tops.

Q. Then do you mean that you know the fact to be that they are broken tops, but that you never so describe them in any invoice or correspondence?

A. I believe not so.

Q. Then I ask you again what you mean by "commercial designation."

A. I see the drift now of your question. In reply to your ques-

tion, sir, I may say we always invoice under the same term as what the article is called to us. We don't give it another name.

Q. Or designation?

A. Well, or designation.

Q. Having given that answer, I ask you whether the commercial designation of articles such as this sample is not Botany laps or Botany waste.

A. No, sir; it is broken tops, to my mind.

137 Q. The commercial designation?

A. Yes; to my mind.

Q. You persist in that?

A. To my kind; I don't know what other people call it.

Q. And you persist in that, despite the fact that you say in invoice or letter that designation would not appear?

A. I only say in my case it does not appear.

Q. Do you know it does not appear in any other case?

A. No.

Q. With the exception of one instance, when you bought one bale which you sold again, have you any personal or actual knowledge of either the purchase or sale of broken tops or from any individual whatever?

A. No, sir.

Q. Did you ever yourself buy or sell any Botany laps?

A. No, sir.

Q. Or Botany waste?

A. No; except combing waste.

Q. And that, you say, was the combing waste produced from your own tops and returned by your own comber to you?

A. Yes.

Q. Then I may take it that, except so far as you may have seen samples passing through the consulate, your practical experience of the waste trade in Bradford is *nil?*

A. Yes; I have no actual experience.

138 CARL HERMANN HOLZHAUSSEN duly sworn.

Examined by Mr. READ:

Q. Where do you live?

A. Bradford.

Q. What part of Bradford?

A. Thornbury.

Q. And where is your place of business?

A. 16 Crossland St.

Q. And what is the name of your firm?

A. Lindner & Holzhaussen.

Q. What is your business?

A. Wool, noil, waste, and yarn merchants.

Q. How long have you been engaged in that business?

A. I have been engaged on my own account 20 years.

Q. Will you kindly look at the sample on the table produced by me? (Witness examined the sample.)

A. I should say they were broken tops.

Q. What do you mean by broken tops?

A. Tops torn into short lengths.

Q. How is it made into that form?

A. It can be done either by machine or by hand; I have no experience of that.

Q. Have you ever dealt in it?

A. Yes; in laps, and we have dealt in broken tops.

Q. Within what period?

A. Just a year ago in broken tops; in laps we do regularly in them.

Q. What is the difference between laps and broken tops?

139 A. The top is the combed wool; a top is broken up afterwards by hand or machine. A lap is the product of the machines between the comb and the spinning frame and the drawing and the reducing box, reducing them to roving.

Q. What do you say a top is?

A. After the wool comes from the comb it is a top.

Q. It comes from the comb as a top?

A. Yes; and a broken top is simply that a top is taken and broken up.

Q. You say that you have dealt in broken tops?

A. Yes.

Q. When was it?

A. It was in June last year. We bought one bale or two bales; I cannot speak to a certainty; we bought one bale from Renton's?

Q. You mean the witness who was on the stand before you?

A. Yes; we may have bought another bale from some one else, but that is one bale I remember distinctly. We had this one bale combed over because we thought there was something in it to make a top out of it.

Q. Do you know how long broken tops have been dealt in as an article of merchandise in this district?

A. I never met any before that American difficulty was on, say two years ago, when America wanted so many laps and the laps were not so numerous in the market to supply the American demand and tops happened to go lower in price, so that it was

140 quite probable or possible to tear up tops and make them into laps and sell them as such.

Q. Prior to that time?

A. I never met any broken tops.

Q. Is your business of such a character that if they had been an article of merchandise you would have met them?

A. Oh, yes.

Q. You are a shipper to America, I believe, are you not?

A. Yes.

Q. For how many years?

A. Three years.

Q. Of wool?

A. Of waste and tops.

Q. Now, in what form, prior to the time you have mentioned, was wool shipped to America, to the best of your knowledge?

A. We exported to America laps, spinning waste, tops of different classes of wool and a few yarns.

Q. The laps you have already described, have you not?

A. Yes.

Q. And that is the article you shipped to America prior to this time?

A. Yes.

Q. And what is the spinning waste that you shipped?

A. Waste that comes off the spinning frames only.

Q. And what were the tops that you shipped?

A. The tops are the combed wool.

141 Q. What is done with it after it is combed; is it rolled into balls?

A. Rolled into balls; the machine rolls it into balls, as a top.

Q. And is it shipped in that form—in that form of balls of top?

A. As balls of top.

Q. And was prior to that date you speak of?

A. Yes; and it is now.

Q. In what form was the spinning waste that you sent to America; can you describe it?

A. Spinning waste is threads, torn up threads, which get torn by the machine in taking off the bobbins, and so on.

Q. And can you describe the difference between the laps you speak of and these broken tops?

A. Yes; I can describe the difference.

Q. Please do so.

A. A lap would never be as regular as this sample or as free from the thread. You never find a lap that is completely free, not in the bulk; you might find one like this (a sliver) in a bale, but you would not find a handful like this in bale that is free of thread. You would find no laps of that uniform length. A lap from the first machine, that refuse from that first machine, would be nearest to this sample; but that is only one machine, and a top would have to go through four or five. The nearer it comes to the spinning frame the smaller it gets turned. After the second machine it gets turned to prepare for the yarn. You don't find a single turn

142 in all this sample. You could not have a lap without a turn. You could not in fact have a lap as uniform as this.

Q. For what period of time did you ship bales of top to America?

A. The last three years—since we have been going into the American trade. We ship tops and wool together.

Q. Are you still shipping them?

A. Yes.

Q. What kind of wool?

A. Camel-hair tops we ship mostly. Botany tops we never have shipped to America.

Q. Are you familiar with the tariff laws of the United States?

A. You mean the duties?

A. Yes.

A. We know what has to pay duty and what has not.

Q. Well, that is one way of answering.

A. If you will confine it to the articles we are interested in.

Q. As a matter of fact, is the camel-hair top you shipped to America subject to any duty?

(Mr. Watson objected to the question and it was withdrawn.)

Cross-examined by Mr. WATSON:

Q. I think you said you commenced the American trade about three years ago?

A. That is so.

143 Q. Prior to which had you any practical acquaintance with it?

A. No American trade.

Q. The spinner receives the top in the shape of a ball, does he not?

A. Yes.

Q. The completed top?

A. The completed top.

Q. And the first process is what? Is it not drawing?

A. The first process is drawing, after the top is put on the drawing machine.

Q. Now, in that first process are not laps made—short ends?

A. There may be short ends left in.

Q. Is it not in that first process they are made?

A. Not all.

Q. I ask whether in that first process there are laps made.

A. Laps are made.

Q. And those laps are short pieces of top, are they not?

A. Yes.

Q. Very similar in length to the length of the sample produced, as far as lengths are concerned?

A. Yes.

Q. Very similar in length to these? (Mr. Watson referred to the slivers of the sample.)

A. Very similar in length to these.

144 Q. What class of people have you been in the habit of buying spinners' lap from?

A. From spinners and dealers.

Q. Do you know whether you bought any laps from spinners or dealers which have been sorted?

A. Yes; only from dealers; we never bought them from spinners.

Q. Spinn*d*ers don't sort?

A. Not as a rule.

Q. But dealers do?

A. Yes.

Q. Have you not found the laps which you bought from dealers, if sorted, have been entirely free from small threads?

A. Never; it is impossible.

Q. You say they cannot sort them?

A. The thread will appear in a part of the lap.

Q. I am asking, without any particular reference to any particular sample, whether you have not bought laps sorted entirely free from thread.

A. Not entirely free.

Q. Don't you know that after the first process of drawing there is no thread at all?

A. There would be no thread.

Q. Then how do you say there can be no laps without thread?

A. You never would have waste from the first machine kept separate.

Q. Now, there, you see, you beg my question; not intentionally, I know; but I ask you if it had been sorted, the pure laps from the others, whether you would not find it then.

145

A. If the lap of the first machine could be kept separate you would have no thread in it. I admit that the waste of the top from the first machine would have no thread in it.

Q. Don't you know that many waste dealers keep large staffs of women and young persons for the express purpose of sorting?

A. Yes.

Q. And some, I dare say, will make the waste into more sorts than others?

A. Yes.

Q. They will sort it with greater care?

A. Yes.

Q. And it is possible that a waste dealer may sort the drawing laps from the other?

A. No; I don't think so.

Q. You don't think it is possible?

A. No; I have never seen laps in my life that were entirely free from thread.

FREDERICK WHITAKER duly sworn.

Examined by Mr. READ:

Q. Where is your residence?

A. 36 Drewton street, Bradford.

Q. And your place of business?

A. 5 George Hotel Yard.

Q. What is your business?

146

A. Wool broker, auctioneer, and general agent.

Q. How long have you been in the wool business.

A. 34 years.

Q. And during that experience have you seen and handled wool in its various forms?

A. Yes, sir.

Q. Will you please look at the sample produced by me and now on the table and state what it is?

A. They are broken tops?

Q. Have you ever seen broken tops made?

A. Yes.

Q. Where?

A. In Halifax.

Q. That is a short distance from Bradford, is it not?

A. About 8 miles from Bradford.

Q. How is it made and how did you see it made?

A. I saw several women engaged in the act of pulling them. They had the top on their knee and were pulling off the different lengths, *mam*ing them into lap *lang*ths, as we understand them.

Q. When was it you saw it being made.

A. In the months of September and October, 1888.

Q. For how long a period have broken tops been bought and sold as an article of merchandise in this district?

A. Not before that time, to my knowledge.

Q. Since that time have you bought and sold them?

A. No, sir.

147 Q. Do you know what Botany laps are?

A. Yes; I think I can tell them when I see them.

Q. Can you explain the difference between these broken tops and the Botany laps?

A. The difference is this: In the broken tops there is no indication whatever of any spinning, whereas the lap has some slight indications of spinning.

By Mr. WATSON:

Q. Will you explain what you mean by indications of spinning?

A. Well, a lap, a real lap, has some little left of the spinning after coming off the frames. In the act of spinning there is a little portion of the product made into a slight thread, which is an indication that it has been spun. I have had no practical experience of it except by going in and seeing the process by accident when I have been on business; but I have no practical experience, only by buying and selling them occasionally.

By Mr. READ:

Q. You are not a spinner?

A. No. It was a matter of price with me. I thought I knew when I was buying them whether they were cheap or dear.

Q. You have acted as auctioneer within the last *few* years, have you not?

A. Yes.

Q. And in what capacity have you bought and sold wool in its various forms?

148 A. In all forms.

Q. Have you sold woolen waste?

A. I never dealt in waste. I have dealt in nearly all kinds of wool, but not in waste. I have sold waste when it has come under the hammer or I had some commission to buy specially; then, of course, I have relied entirely in asking for the article I wanted upon the waste dealers; but as to any real knowledge of pure waste—yarn

waste or spinning waste—I have none beyond what you might say the surface.

Cross-examined by Mr. WATSON:

Q. Then you never dealt in waste in any way?
A. Only so far as I have stated.
Q. That is to say, sold it by auction?
A. By auction, or if I have had a sample sent to me to compare or to find it I have gone and compared it and offered it, and so on; but I was never brought up to the waste trade. I am not a practical waste dealer—that is, I have not been a dealer in waste—nor have I any really practical knowledge of waste, only so far as making a comparison with others. I have been entirely in the raw material and noils.
Q. How long have you acted as auctioneer in Bradford?
A. I have acted in Bradford since 1868, more or less.
Q. How long have you been in what I call regular practice as auctioneer?
A. Since 1868.

The hearing was adjourned till half past 11 on Thursday, July 10, at Liverpool.

149 Hearing resumed 11.30 a. m., July 10th, 1890, American consulate, Liverpool.

Mr. Read appeared for the plaintiffs.
Mr. Watson appeared for the defendants.
Mr. Patterson, of the firm of Hughes & Isherwood, was also present.

JAMES LORD BOWES duly sworn:

Q. Where do you live?
A. At Liverpool.
Q. Your address?
A. 11 Dale street, Liverpool.
Q. What is your business?
A. Wool merchant and broker.
Q. Name of your firm?
A. J. L. Bowes & Bro.
Q. How long have you been engaged in the wool business?
A. About 35 years.
Q. During that time have you engaged in shipping wool to America?
A. Largely.
Q. Are you familiar with the various kinds of wool?
A. Yes.
Q. In all its various forms?
A. Yes.
150 Q. Will you kindly look at the sample of wool produced by me and state what it is?

A. Yes; in my judgment it is tops broken into pieces.

Q. Do you know how they are made?

A. I have never broken tops, but I know from common information how they are broken.

By Mr. WATSON:

Q. Did you ever see any broken?

A. I have had it explained by experts how they are broken.

Q. Did you ever see tops broken?

A. I have not seen the breaking process.

By Mr. READ:

Q. You say that the sample is top broken; how is the commodity that is represented by that sample designated generally by the trade?

By Mr. WATSON:

Q. Is there a trade designation for it?

A. There is a trade designation for it. It is designated as broken top.

Q. How long has it been so designated?

A. Two or three years.

Q. How long have broken tops been dealt in as an article of merchandise in England?

A. To my knowledge since early in 1888.

Q. Would you have known of it if they had been dealt in as an article of merchandise prior to that time?

A. In all probability.

151 Q. Prior to that time or to the time when that article was dealt in as an article of merchandise, in what form was wool usually shipped to the United States?

A. In two forms—the raw state and also in a semi-manufactured state—as waste and noils and in their raw and manufactured state.

Q. When you say "waste," what do you mean, Mr. Bowes?

A. There are two kinds of waste; one made from old rags, torn up, and another kind which is the material made in the process of the manufacture of wool into yarn. The latter comprises ring waste, thread waste, laps and slubbing, all well known kinds of waste.

Q. For how long a period within your knowledge has wool in the forms that you have mentioned been exported to the United States?

A. In some of the forms 30 years, and in others more recently, 10 to 15 years.

Q. For how long a period has waste in the form you have mentioned been exported to the United States?

A. The same answer applies to that.

Q. Do you know why tops are broken into form like the sample?

(Mr. Watson states that this is an objectionable question, unless

some particular person or instance be indicated; also that the answer as well as the question should be excluded as not having any relevancy, and because he has no means of testing the accuracy of the witness' statement and because his clients are not bound
152 by what other persons have done.)

A. Broken tops have been offered to us as broken tops with the view that we could enter them in America at a lower duty than we could if they were shipped in their original form.

Q. Do you know what Botany laps are?

A. Yes.

Q. What are they?

A. Botany laps are a portion of waste made in the process of converting wool into yarn.

Q. Are Botany laps sometimes called "waste"?

A. They go under the general term of waste.

Q. Have you ever dealt in an article like the sample or in broken tops?

A. We have never dealt in broken tops or an article like this sample with one exception of 5,000 lbs., which was very similar to it and which we bought before we were alive to the manufacture of broken tops.

Q. From whom did you buy it?

A. From T. A. Firth & Co.; we bought it as wool waste.

Q. When?

A. Early in 1888.

Cross-examined by Mr. WATSON:

Q. Mr. Bowes, have you any practical acquaintance with the processes of combing and spinning wool?

A. I have such as I have gathered in going through mills occasionally during the last 20 years—observation.

Q. Have you any practical acquaintance with the pro-
153 cesses.

A. Not of the manufacture, but enough acquaintance to enable me to avoid buying broken tops when they are offered to me and to preserve me from—(Mr. Watson objected to the form of the answer)—to preserve me from shipping broken tops as wool waste.

Q. That was not the question I asked you, Mr. Bowes. How often have you observed the process of combing and spinning in actual operation?

A. Probably a dozen times.

Q. And for what length of time on each occasion?

A. During a visit to the mills in an afternoon.

Q. About how long a time on each of the twelve occasions have you observed this process?

A. Perhaps about an hour at a time.

Q. Do you consider that that enables you to say that you have a practical acquaintance with the procesess of combing and spinning?

A. I say it is sufficient practical acquaintance to enable me to carry on my business as a wool merchant in the purchase of waste.

Q. But I understand that that did not save you from being imposed upon on one occasion.

A. No; because the person we bought it from was a person we trusted, and he offered it to us as wool waste and we bought it as wool waste.

Q. And you shipped it as wool waste.

A. We shipped it as wool waste, and I don't know to this
154 moment that it was not wool waste; that has never been settled yet.

Q. What do you mean by that answer? Do you mean to say that there is some doubt whether it was broken tops or not?

A. I feel little doubt on the subject, but the question has never been decided because the seller would not give an explanation.

By Mr. READ:

Q. You mean T. A. Firth & Co.?

A. Yes.

By Mr. WATSON:

Q. What made you say just now in so positive a manner that on one occasion you bought broken tops from T. A. Firth & Co. if you have any doubt about it?

A. I say I have no doubt about it, but that it has not been definitely proved.

Q. Did you see a sample of the lot you refer to before you bought it?

A. Yes; I saw it cursorily.

Q. Do you mean to say that you bought a lot of goods upon mere cursory examination?

A. Yes.

Q. Did you form any judgment upon the article before you bought it?

A. Yes.

Q. What was it in your judgment at that time?

A. It was an unusually good lot of wool waste.

155 Q. In your judgment at that time?

A. An unusually good lot.

Q. Amongst the articles that you have dealt in for a long period of years are Botany laps, you say?

A. Yes; but I did not say for a long period of years. I did not specify any period.

Q. How long have you bought and shipped Botany laps?

A. Perhaps five or six years.

Q. Did you discover any difference between the ordinary Botany laps and the lot of laps you have spoken of that you bought from Firth's?

A. It was not laps; it was a lot of broken tops.

Q. You described Botany laps as waste, didn't you?

A. Yes; I dare say I did; if I have not done so I will do it now.

Q. Did you discover any difference between the Botany laps or Botany waste which you had been in the habit of shipping before and the lot which you have spoken of as having purchased from T. A. Firth & Co.?

A. I discovered a difference.

Q. When you bought them?

A. Yes.

Q. What was the difference?

A. They were unusually good.

Q. But still you accepted them?

A. On a cursory examination.

Q. You accepted them under the same designation?

A. As waste.

156 Q. Was it under the same designation or not?

A. I am not going to say that I accepted them as laps.

Q. What did you accept them as?

A. As waste.

Q. Did you ever receive from any one an invoice, letter, or any communication or document of any kind in which an article you were dealing with was described as broken tops?

A. Yes.

Q. Tell me when?

A. In April, 1888.

Q. More than one?

A. Yes.

Q. From whom?

A. One was from Mahler, Sichel & Co. I had lots offered verbally by dealers who came down to Liverpool.

By Mr. READ:

Q. They offered them as broken tops?

A. Lots offered as broken tops by dealers who came and did it verbally.

By Mr. WATSON:

Q. Have you any other letter but the one from Mahler, Sichel & Co?

A. I think there were two.

Q. From the same firm?

A. Yes.

Q. From any other firm?

A. I think there was one from the continent. At all events there was correspondence from the continent on the subject. They

157 declared them as broken tops.

Q. You have not got those communications with you?

A. No; I can get them.

Q. Those I understand were letters?

A. I know of one letter and I believe there was a second.

Q. Did you ever receive an invoice in which the article was described as broken tops?

A. No; I never bought any broken tops knowingly.

Q. Did you see an invoice belonging to anybody else in which they were described as broken tops?

A. No.

Q. Did you ever see the invoice of any article under any name which you knew to be broken tops?

A. No.

Q. Do you know of any instance (we have got the experience of your own firm)—do you know of your own knowledge of any other person or firm who has at any time bought or sold broken tops?

A. No; not of my own knowledge; but it was common talk——

(Mr. Watson objects to witness proceeding to qualify his answer by asserting what he has heard in common talk, which is mere hearsay evidence, and the truth of which he says he has no means of testing.)

WITNESS: It was common talk in the market here and in Yorkshire and the goods were offered to us openly with the view to our shipping them to America.

158 Q. Will you tell us what you mean by saying that broken tops is a trade designation?

A. They were offered to us as broken tops by dealers in Bradford.

Q. But were not they offered to you as waste?

A. No; as broken tops. Well, I will qualify that. They were offered to us as broken tops by honest dealers, and deceitfully as wool waste by others with the view of entrapping us.

Q. Now, I must ask you to tell us who were the persons who offered you this article as broken tops by that designation?

A. Mahler, Sichel & Co.

Q. Anybody else.

A. And in the ordinary course of business we had them offered to us by others but not by letter.

Q. I ask you to give me the names of other persons who have offered you this article under the designation of broken tops?

A. I decline to answer that question.

Q. Now, I ask you whether any other person or firm but Mahler, Sichel & Co. in the one instance you have spoken *to*, have ever offered you this article under the designation of broken tops?

A. Yes.

Q. How many?

A. One or two.

Q. You decline to give their names?

159 A. Yes.

Q. How many persons or firms have offered you the article deceitfully under the name of "waste"?

A. One.

Q. Only one?

A. Well, no; two.

Q. Will you give me their names?

A. No.

Q. You decline?

A. Yes.

Q. Have you in your time shipped large quantities of laps?

A. Not very large quantities. Laps are made in small lots only; only small lots; say 10,000 lbs; 10,000 lbs. is a large quantity of laps, whereas broken tops could be bought in half a million lbs.

Q. Will you undertake to say that the laps which you have shipped have been entirely composed of laps?

A. No; there is no such thing.

Q. I am content with your answer.

A. Allow me to give my opinion. In the mill, laps and rovings and slubbing and other waste are thrown together, making a heap of waste, and that is the kind of waste that goes by the commercial name of laps and which we shipped. It varies.

Q. Just let us test your knowledge. Don't you know that spinners' waste is very largely sorted?

A. Yes.

160 Q. Don't you know that the laps are separated and sorted into distinct sorts?

A. Sometimes.

Q. Have you never shipped laps which have been sorted in that way without the presence of other waste?

A. No; I don't think so, not entirely pure laps.

Q. Will you undertake to say that amongst the laps which you have shipped there have not been broken tops?

A. Not broken tops according to the commercial designation of broken tops. There have been bits of tops thrown in, bits of tops made in the ordinary course of trade.

Q. Now, let me put my question again. Will you undertake to say that amongst the laps you shipped there were not present more or less of broken tops?

A. There were more or less bits of broken tops, but not what I define as broken tops in my evidence.

Q. Will you undertake to say that they did not on many occasions contain more or less of broken tops?

A. More or less of bits of tops.

Q. That is your answer?

A. Yes.

Q. Does the practical acquaintance that you have obtained in your dozen visits to mills enable you to say whether an article such as the sample now produced could be used without being combed or put through a process of manufacture?

A. No; my practical experience does not.

Q. Does anything enable you to say?

A. Yes; my judgment and the information I have received

161 from experts in the pursuit of my business enables me to say it can be used without being recombed.

Q. In what way?

A. By putting it on the machine with wool and letting it go through the machine.

Q. What sort of a machine?

A. A carding machine.

Q. In that case it would be used in the woolen trade, would it not?

A. I have not sufficient experience to answer that question. There are so many varieties. There is no definition existing of the words "woolen" and "worsted" that would be accepted by any three people.

Q. Did you ever reside in either the woolen district or the worsted district?

A. Yes; I was born there.

Q. Were you ever engaged in the trade there?

A. No; but my family have been engaged in it for several generations.

Q. Let us test the measure of your knowledge. You say that no man living can define what is the worsted trade and what the woolen trade?

A. I said no definition would satisfy three people?

Q. You know that a top can be spun into yarn, don't you?

A. Yes.

Q. Without being either carded or combed again?

A. Yes; of course.

Q. Could the article of which you have a sample before
162 you be spun without being either combed or carded?

A. No; it is broken top; by being broken it is split for the purpose of spinning.

Q. And is it now, however produced, in a condition of waste?

A. Certainly not; it has nothing to do with waste; it has no relation whatever to it.

Q. Would you allow that gentleman engaged at Bradford in the actual business of manufacture would be able to give a better opinion upon this subject than yourself?

(Mr. Reed objects to the question on the ground that it is not cross-examination.)

A. I should like you to give me the names of the gentlemen you refer to?

Q. Mr. Knowles, of the firm of T. A. Firth & Co.; Mr. Richards, of Bradford; Mr. George W. Lupton, of Bradford; Mr. Thomas R. Renton, of Bradford; Mr. Maximillian Delius, of Bradford; Mr. Holtzhaussen, of Bradford, and Mr. Frederick Whitaker, of Bradford.

A. I only know three of the names, and of those three I would not give preference to their judgment over mine.

Q. Which are the three you would not give preference of judgment to?

(Mr. Read objects to the question on the ground that it does not shed any light on the inquiry.)

A. I prefer not to answer that question.

Re-examined by Mr. READ:

163 Q. Mr. Bowes, in the course of your cross-examination you have stated that a commodity like the sample had been offered to you as waste by dealers. Will you kindly tell me for how long a period the commodity like the sample has been called waste in England?

(Mr. Watson objects to the question on the ground that the witness gave general evidence of this description in his examination-in-chief, and that Mr. Watson has been endeavoring in his cross-examination to test him on specific instances, which he says turn out to be very few, and that now the witness is asked to give general evidence which he has admitted he is unable to support by specific instances.)

Q. Would you kindly answer my question?

A. For two or three years. On some occasions, which I can specify, one or more, and on others which were passed aside without note being taken of them.

ARTHUR WILSON RONALD duly sworn.

Examined by Mr. READ:

Q. Where do you live?

A. My business address is Bixteth St., Liverpool.

Q. You reside in Liverpool?

A. Yes.

Q. What is your business?

A. I am a wool broker.

Q. What is the name of your firm?

A. Ronald & Roger.

164 Q. For how long have you been engaged in the wool business?

A. I was apprenticed, first, from 1861—that is, nearly 29 years.

Q. And in the course of your business have you become familiar with or have you handled wool in its various forms?

A. Yes.

Q. Will you look at the sample produced by me now on the table?

A. Yes.

Q. Tell me what it is.

A. It is broken tops, in my judgment.

Q. And when you say broken tops what do you mean?

A. My judgment is this, that it has been in the shape of tops and has been broken after it was made into a top.

Q. For how long a period has the commodity like the sample been dealt in in England as an article of merchandise for sale?

(Mr. Watson objects to the question and says: "It is the same objection that I have been urging from the very commencement of this inquiry, that the witnesses are constantly asked as to the period of time which a certain practice has existed without its being first ascer-

tained from the witness that such a practice ever in fact existed, which must be the foundation of a question as to the period.")

A. I bought some of it—1,000 lbs.—two years ago, and that is the only tranaction I have had in this broken top.

165 Q. Do you know whether prior to that time broken top had been an article of merchandise in England for sale as a commodity?

A. I don't. I only know as to the Liverpool market.

Q. You would be likely to know if it had been? I only want your knowledge; nothing more than that.

A. I had better say "no" to the question.

Q. Would you be likely to know if it had been?

A. Only as regards Liverpool.

Q. You would be likely to know if it had been in the Liverpool market?

A. Yes.

Q. Had it been in the Liverpool market?

A. No.

Q. You bought some of it how long ago?

A. As far as I can recollect, two years ago.

Q. What did you do with it?

A. Sent it to America; we bought it for orders. As brokers we get an order — buy the stuff and it its shipped on account of the people for whom we buy.

Q. Have you been engaged in the shipment of wool in its various forms to America?

A. Yes.

Q. For how long a period?

A. For 23 years.

Q. For 23 years you have been engaged in the buying of wool for shipment to America?

A. Yes; we don't ship it ourselves: we only buy it here

166 for America.

Q. Now, up to the time that you made this shipment two years ago of the article like the sample, in what form had you shipped wool to America?

A. In the state in which it is imported here, either unwashed, washed, or scoured, and also in the state in which it is dealt in as regards domestic wools in this country, and, further, as regards noils. Noils are called wool, but they are made in this country out of different kinds of wool.

Q. They are made in the course of manufacture?

A. Yes; it is the short of the top.

Q. Did you ship any waste during that period?

A. Yes; but not waste in this shape.

Q. What kind of waste did you ship?

A. Garnetted waste.

Q. What do you mean by garnetted waste?

A. It is open threads.

Q. Opened by the garnetting machine?

A. Yes; besides the garnetting waste also two or three small lots of lap waste of an unimportant character as to quantity.

Q. As a wool broker do you buy and sell wool for people outside of Liverpool?

A. Yes.

Q. Do you sell them for people living in Bradford?

A. Yes.

Q. And in Leeds?

A. Yes.

167 Q. I suppose you both buy and sell for Bradford people, for Leeds people, and for Liverpool people?

A. Yes.

Q. You are what is known as a general broker in wools?

A. I am a wool broker.

Cross-examined by Mr. WATSON:

Q. Pursuing the last answer, is not what you sell and buy for persons outside Liverpool, in Leeds and Bradford, entirely confined to raw wool?

A. No; I mentioned noils.

Q. Raw wools and noils?

A. Yes; and the instance I gave you of broken tops.

Q. Did you buy the broken tops for some person in Bradford or Leeds?

A. No; from a person in Bradford or Leeds.

Q. That was an out-and-out purchase, was it not?

A. It was bought for an American and shipped.

Q. So far as yourself and the Bradford seller were concerned it was an out-and-out sale?

A. I give no name of my seller or buyer.

Q. But as between yourself and the seller in Bradford it was an out-and-out transaction?

A. Certainly; I bought and paid for it.

Q. Was it an out-and-out sale?

A. As between us two, yes.

Q. Did you ever sell any waste in Liverpool to any consumer in Bradford or Leeds?

168 A. Yes.

Q. Is that frequently?

A. No; only once that I can remember.

Q. Is it not part of your general business to sell waste anywhere for your home consumption?

A. No.

Q. I mean by home consumption in England.

A. No; it does not come into this market as a regular thing; we have to go in search of it when we want it.

Q. May I take it that the market for waste is confined practically to Yorkshire?

A. Practically; there is France, of course.

Q. I am sspeaking of this country.

A. It is confined to the manufacturing districts.

Q. It is not bought in this market, is it?

A. If a man comes to me today and says, "Can you find me some waste?" I should probably have to apply to some person in the manufacturing districts to get it; I should not find it; as a rule, in Liverpool.

Q. I may take it that waste is not bought and sold in the ordinary manner on the Liverpool market?

A. No may I qualify; that in the same way that the previous witness has stated? We have been offered waste by people who have come here.

Q. From the manufacturing districts?

A. Yes; for the purpose of offering it to us.

Q. And do you not invariably purchase waste, when you do purchase it at all, for exportation?

169 A. Yes; invariably.

Q. Now, let us look at the instance you refer to, in which you bought a 1,000 lbs. about two years ago; did you search for that or was it offered to you?

A. Our firm asked for it.

Q. Did you buy it in Bradford or Leeds?

A. In Bradford.

Q. What was it called in the invoice to you?

A. As far as I recollect, it was called by a No.; there was no designation at all; but I asked for it and I got what I asked for.

Q. Did you send a sample?

A. No; I think a sample of broken tops was asked for, and that sample consisted of 1,000 lbs. that I bought and sent off.

Q. A small quantity?

A. Just a small sample; it was under 1,000 lbs.

Q. Have you any practical acquaintance with the process by which waste is produced?

A. None, only as a broker.

Q. You could not tell us all the different kinds of waste which are produced in the process of worsted manufacture?

A. I say I have no practical knowledge, but I have seen the samples of different kinds of waste that are brought here.

Q. But, as I understand, you never dealt in any garnetted thread waste?

A. We have samples before us of all kinds.

Q. Your practical acquaintance, at all events, so far as
170 dealing is concerned, has been confined to garnetted thread waste?

A. To garnetted waste.

Q. It was thread waste?

A. It was thread waste, but it is no longer thread when it has been garnetted.

Q. There may be a number of other kinds of waste?

A. There are.

Q. Which you are not practically acquainted with?

A. Which we have not dealt in sufficiently to make us practically acquainted with.

Q. Do you know for what purpose laps and the superior parts of waste are used for in this country?

A. No.

Q. Have you any idea as to the extent to which laps are produced in the manufacturing districts?

A. No; I have no personal knowledge.

Q. Now, if you had a little practical acquaintance with no kind of waste except garnetted thread waste, and if you have never, as I understand, exported tops, tell me how you have sufficient acquaintance to enable you to state that this is broken top.

A. Because as I gave you an example.

Q. What was that?

A. The small lot we ordered as broken tops and shipped as broken tops.

Q. Then that one transaction is the foundation of your judgment as to this sample?

171 A. Yes; as to this sample.

The hearing stood adjourned till Friday, 11th, at 11 a. m.

Hearing resumed at 11 a. m., July 11th, 1890, American consulate, Liverpool.

Mr. Read appeared for the plaintiffs.

Mr. Watson appeared for the defendants.

JOHN WILLIAM TURNER duly sworn.

Examined by Mr. READ:

Q. Where do you reside?

A. At Bradford.

Q. Are you engaged in business there?

A. Yes.

Q. What kind of business?

A. Wool broker.

Q. What is the name of your firm?

A. John W. Turner.

Q. How long have you been engaged in the wool business?

A. About 30 years.

Q. And during that time have you dealt in various kinds of wool and wools in its various forms?

A. Yes.

Q. To a considerable extent, I think.

172 A. Yes.

Q. Have you bought wool for exportation as well as for domestic use?

A. Yes.

Q. Will you please look at the sample on the table produced by me and tell me what it is?

A. Broken tops.

Q. Mr. Turner, you were in some way connected with the Royal Show at Windsor, were you not?

A. I was judge of wool at the Royal Show at Windsor in 1889.

Q. Have you not on more than one occasion written articles on the subject of wool for the Royal Agricultural Society?

A. Yes; for the Royal Agricultural Society and sundry newspapers. I write the annual wool report for the "Bradford Observer."

Q. Have you ever dealt in a commodity like the sample?

A. No; not like this sample.

Q. Have you come in contact with broken top?

A. Yes; I have.

Q. Frequently?

A. Pretty frequently within the last two years I have seen them about.

Q. For how long a period has a commodity like the sample of broken tops been an article of merchandise for sale in this country?

A. Less than two years, I should think.

173 Q. If it had been dealt in for any considerable length of time before that, would you in your dealings have come in contact with it?

A. Yes; certainly.

Q. I understood you to say you dealt in wool -- only for the domestic trade, but also for the foreign trade. Tell me in what form wool was exported from this country prior to the time that this article became an article of merchandise to America.

A. Principally in the raw state and in the grease.

Q. And any waste?

A. Some waste and some noils. Tops practically never did go.

Q. In what form was waste that was shipped to America--what kind of waste was it?

A. Principally spinning waste--fine spun stuff; within a few years some laps. Laps did not go very much only by accident until two or three years ago. The Government would not admit them as waste.

Q. You mean the Government of the United States?

A. I mean the United States Government.

Q. Is there any demand in this country for the article you call broken tops?

A. No.

Q. Do you know why?

A. Well, it has never been an article of commerce here. We should treat it as waste. If there was a quantity of it on the market it would get sold naturally, because it could be combed

174 back into tops and noils.

Cross-examined by Mr. WATSON:

Q. Mr. Turner, is not your principal business that of buying and selling as a broker on commission for other persons?

A. Yes.

Q. Is your business principally confined to articles used or produced in the worsted trade?

A. Principally, yes.

Q. Have you had any transactions in the woolen trade as distinguished from the worsted trade?

A. I have a few.

Q. Are the two trades—the woolen trade and the worsted trade—marked distinct?

A. Yes.

Q. I suppose no one engaged either in the woolen trade or worsted trade of the west riding of Yorkshire would have any doubt as to what was worsted and what woolen?

A. Well, there is some doubt arises sometimes. When you get into the manufactured article there should be no doubt; in yarn, for instance.

Q. When you get to the state of yarn there is no doubt?

A. No.

Q. Both articles are produced originally from wool?

A. Yes. I say there is no doubt, but there is sometimes a little doubt; the two styles of manufacture run into one another a little.

175 Q. At the yarn point?

A. At the yarn point, too, there is sometimes a little doubt. We have a great discussion on that at times.

Q. But the broad lines are well defined between woolen and worsted?

A. Yes, speaking broadly; undoubtedly.

Q. In that sense, what have been the nature of your dealings with the woolen trade?

A. Principally selling wool to the woolen trade.

Q. Raw wool?

A. Raw wool and waste wool, noils—by products, I call them.

Q. Did you ever sell any laps to the woolen trade?

A. Yes.

Q. Botany laps?

A. Yes; Botany laps.

Q. Look at that sample piece (part of the sample produced by Mr. Read) I give to you. Take those pieces you have in your hand. Are those very similar to Botany laps?

A. There is a certain similarity.

Q. Are not those pieces, apart from their mode of production, technically laps?

A. As I see them now?

Q. Yes.

A. Yes; I could not call them anything else now, because that is the only trade term I should have for them.

Q. Botany laps?

A. Yes.

176 Q. And can only be used for the same purposes and in the same way that Botany laps produced by the spinner can be used?

A. Just so.

Q. You quite understand that I am now speaking entirely irrespective of the mode in which they have been produced or the motive for which they produced them?

A. Yes; I understand. That is my answer, based upon that.

Q. In this state are they not, in fact, Botany laps or Botany waste?

A. Well, I know what I mean myself by Botany laps. Those would have to be classed under that heading. If you ask me to say they are laps, I cannot.

Q. I ask you to follow me upon that assumption. Upon that assumption are they not now in the category of Botany laps or Botany waste and can only be useable for the same purpose and in the same way as Botany laps are used?

A. Yes; that is so.

Q. Tell me how you distinguish the sample produced from what you have been suggesting were ordinary Botany laps?

A. There are several ways. There is a perfect regularity about these.

Q. What characteristics are there?

A. In point of size, to begin with?

A. Shall we say length?

A. Length and thickness of the sliver. That is the usual
177 thickness of a piece of top. (Witness referred to a piece of the sample.) If you had that in regular Botany laps you would probably have a great proportion of the stuff no thicker than one-third of a sliver.

Q. Anything else?

A. Well, I don't know how these have been constructed.

Q. You have not been asked.

A. I only wanted to answer your question. These seem as if they had been swum through water. They have an appearance at the end which a regular Botany lap has not. They are not free.

Q. Do you think that a person not practically conversant with the processes of combing and spinning would readily be able to distinguish between a Botany lap produced in the spinning and the lap produced?

A. It would not be readily discerned except to a man who did know a great deal about the process of how they are arrived at.

Q. I don't want to disparage anybody, but may I put this to you? Have you a practical acquaintance with those processess in your own immediate neighborhood of Bradford and the manufacturing district which is not possessed by brokers, say, in Liverpool or in New York?

A. I think so. You know we see a great deal more of the manufacture than brokers outside the districts do.

Q. Is the demand for material—wool, the better kinds of waste, and the materials that can be worked up into the manufactured fabric—always the same in the woolen and worsted trades?
178 Do they run concurrently or is the demand fluctuating, sometimes brisker in one than the other?

A. Sometimes brisker in one than the other, undoubtedly.

Q. Are there not frequent periods when the woolen trade of Yorkshire is brisk and the worsted trade is exceedingly depressed, and *vice versa?*

A. I should say so to a great extent.

Q. Is it not a fact that during the past few months, say since November in last year, tops in the Bradford trade have been absolutely unsaleable?

A. I could not say that.

Q. As nearly as possible.

A. They have come down very much in price, and they are bad to sell, certainly.

Q. Have they not come down 30 or 40 per cent.?

A. About 30 per cent.?

Q. Has there been any corresponding fall in Botany laps which would be useable in the woolen trade?

A. Nothing like the same proportion. There has been a slight fall in laps, but nothing like the proportion in tops.

Q. Is it not a fact that the demand in the woolen trade during the same period has kept fairly well up?

A. Yes; it did not vary so much as our market, at any rate.

Q. Now, during the last two or three years have you yourself dealt in broken tops?

A. I never bought any that I know of.

Q. Have you ever sold any?

179 A. No; not broken tops. Pardon me. I have sold a small lot of broken tops about a year ago; 10 bales.

Q. Did you sell them by auction?

A. I believe they had been to America and come back again, and some one sent them to me to sell, and I sold them into the woolen trade.

Q. As laps?

A. I do not know, really. I told the man what they were when I sold them to him. Of course we would have to describe them as laps because we had no other trade term for the article.

Q. Do you know, as a matter of fact, whether they had been to America or not?

A. I don't know to my own knowledge, but I suppose they had.

Q. Have you ever been concerned in any other transaction with an article which you believed to be broken tops?

A. Yes; I have.

Q. Tell us what it was.

A. I bought a lot of Botany laps to be exported to America, and, for anything I knew, I got genuine laps and sent them out to America. The American Government refused them, and we had them sent back. When they came back they were broken tops.

Q. You bought broken tops?

A. I did.

Q. And didn't know better, I suppose?

A. If I had seen what had come back I might have known different.

180 Q. If you had seen what came back before they were sent out?

A. Yes.

Q. Did you send out what you had not seen?

A. I was supposed to have seen them.

Q. Am I to understand you bought them unseen and sent them out unseen?

A. No; you must not understand that.

Q. Must I understand that for once your judgment deceived you?

A. No.

Q. What is your explanation that you sent out what you afterwards discovered to be broken tops as Botany laps and you didn't know until they came back?

A. Well, my explanation is rathar a serious one, because I went to see bales of laps, and for anything I know I did see them. I examined them and found them all right and had them sent out. When they go to America and come back again the article is not what I saw.

Q. After that remark I am not going to ask you any names, but still I must ask you for the fact. What you say, then, is that the person from whom you bought them substituted an entirely different article from the laps you saw?

A. That is what I say. I cannot believe anything else happened. It is rather serious—so long as you don't ask me for names.

Q. What you did see when you purchased were, in your judgment, what you call genuine laps?

181 A. Yes.

Q. What came back from America were broken tops?

A. They were broken tops.

Q. And do you think that the person from whom you bought them knowingly substituted broken tops for the laps that you bought?

A. I think so.

Q. Didn't you argue from that that the laps which you saw were of greater value than the broken tops that were actually substituted?

A. That would be so.

Q. Well, now, bearing in mind the answers which you have just given, I ask you whether a state of circumstance- may not arise—as you suggest, did arise in that case—in which a top, from circumstances of the market demand or otherwise, may be worth more money broken into laps and converted, as I say, into waste than in the top itself?

A. Yes: there might be a condition of things like that.

Re-examined by Mr. READ:

Q. What was the quantity of the shipment you made?

A. About 150 bales.

Q. Which you shipped as Botany laps, but which you subsequently discovered were broken tops?

A. Yes.

Q. About when was that shipment, as near as you can tell?

A. Fifteen months ago, probably.

Q. Did you buy them from a sample?

182 A. Yes.

Q. How much of the bulk did you see before the shipment?

A. I saw the upper portion of every bale. There were 150 bales, which were shipped at different times, of course.

Q. How much did you see?

A. The top part of every bale.

Q. Did you see anything below the top part?

A. Just by pulling a bit; that is all. We did not presume there would be anything different between the bottom and the tops of the bale.

Q. I don't want you to disclose any business secret if it is an important one, but can you tell me where you bought these tops, from what locality?

A. They were bought in Halifax.

Q. That is within 6 miles of Bradford?

A. Yes.

Q. As a matter of fact, Halifax and Bradford are one so far as the wool business is concerned?

A. Yes.

Q. And as a matter of fact the Halifax people attend the woolen exchange in Bradford?

A. Yes.

Q. You stated during your cross-examination that these broken tops were called laps, did you not?

A. I said I would have to call them laps because we have no other name for them.

Q. As a matter of fact, how long have broken tops been

183 called laps?

A. Well, about two years.

Q. Have you any practical experience in the spinning of wool?

A. No.

Q. And when you stated that these broken tops could only be used the same as Botany laps it was not from any experience in the use of them that you so spoke of them?

A. No; only from my knowledge of the trade where I can sell the two things.

Q. Can Botany laps be recombed without any further manipulation?

A. No; they will require sorting.

Q. When these 150 bales came back from America and you examined them how did you satisfy yourself that they were broken tops?

A. I had them all turned out and saw the whole thing.

Q. Are you able to remember what the price of top was at the time you made that purchase? I mean top of the same quality.

A. I may put it in this way: that at one time we had got the

price of laps up to 25d. There were tops which were not worth more than 24d.

Q. Of the same quality of wool?

A. I could not say that; but similar. The high-priced laps would, no doubt, be a little better wool than the top.

Q. Are you speaking of natural lap or broken tops?

A. Laps. Mr. Watson asked me if there was not a point
184 at which a top might be worth less than the lap.

Q. And it was one of those periods what you referred to?

A. That was the period.

Q. When was that period, about?

A. It would be some time about January or February, 1889.

Q. Are you able to say what that difference of price was due to?

A. I think it was quite natural—the demand for laps from the United States.

By Mr. WATSON:

Q. Was there no other cause for the rise in the price of laps at that time?

A. No; I don't think so.

Q. Was there not at that time a brisk demand in the woolen trade?

A. Well, I think there was, but I don't remember all the circumstances.

Q. But I understood you in your cross-examination to say that similar periods have occurred in former times?

A. Yes; I believe they have.

185 "EXHIBIT A." T. H. S. July 1st, 1890.

181,233.

Invoice of 10 bales carpet noils, 13 bales wool waste, 2 bales mohair waste, 6, per steamship Wyoming, for entry at New York, H. 30 (802), consigned to order by Hughes & Isherwood, of Liverpool, the 10th day of November, 1888.

Purchased in Liverpool consular district.

G. W. PATTEN & CO.

Charges not included in the value of the goods, 15 2 07.

(808) = 10 bs. wg.	50	2	22					
White carpet noils	1	0	4					
	49	2	18	or 5,562 lbs. @ 10¼ p. lb.		237	10	10
				10 bags @ 2 6 each		1	5	0
								238 15 10
(407) = 13 bs. wg.	68	1	27					
Wool waste	1	1	3					
	67	0	24	or 7,528 lbs. @ 23½ p. lb.		737	2	4
				13 bags @ 3/ each		1	19	4
								739 1 4
(801)[1] 1 bl. wg.	5	0	11					
Mohair waste			9					
	5	0	2	or 562 lbs. @ 11¾ p. lb.		27	10	3

(802) = 1 bl. wg.....	5	0	14 9					
	5	0	5	or 565 lbs. @ 11¾ p. lb.....	27	13	3	
				2 bags @ 2/6 each..		5	0	
								55 8 6
								£1,033 5 8

Charges.

Cartage and porterage to ship.....	£1	12	8	
Dock and town dues, entry & b. l.....		19	10	
Consul's fee, 10/6; bill stamp, 11/; cables, 43/2.....	3	4	8	
Discount, 4 mos. acceptance, at 3½%.....	12	17	9	
Brokerage, 2%.....	20	13	4	
				39 8 3
				£1,072 13 11

E. & O. E.
The charges on this invoice which are not included in the value of the goods.
For transhipment to Messrs. G. W. Patton & Co., Philadelphia.
(Signed) HUGHES & ISHERWOOD.

186 "EXHIBIT A." T. H. S. July 1st, 1890.

Declaration No. 138.

Declaration to be made by the purchaser or owner where merchandise has been actually purchased.

I, C. P. G. Patterson, of Liverpool, in the county of Lancaster, do solemnly and sincerely declare that I and my copartners are the purchasers of the goods, wares, and merchandise in the annexed invoice mentioned and described; that the said invoice is in all respects true; that it contains a full and true statement of the time when and the place where the goods, wares, and merchandise therein mentioned and which are subject to any ad valorem rate of duty regulated or directed by law to be estimated or based upon the value of the square yard or of any other specified quantity or parcel were purchased, and the actual cost and quantity thereof, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice except such as have been actually allowed thereon; that the currency in which said invoice is made out is the currency which was actually paid for said goods, wares, and merchandise; that no different invoice thereof has been or will be furnished to any one. I further declare that it is intended to make entry of the goods, wares, and merchandise mentioned in said invoice at the port of New York, in the United States of America.

And I make this solemn declaration.

(Signed) C. P. G. PATTERSON,
A Commissioner to Administer Oaths in the Supreme Court of Judicature in England.

Form No. 140.

I, Chas. F. Russell, consul of the United States of America at Liverpool, do hereby certify that at Liverpool on this 10th day of

Nov'r, anno Domini 188–, the within invoice numbered 10894; in which are mentioned and described certain noils, etc., amounting, with the charges thereon, to the gross sum of £1,072 13 11, was produced to me by C. P. G. Patterson in person, the purchaser, with his copartners, of the goods, wares, and merchandise therein mentioned, who thereupon declared in writing, in my presence, that it was intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America. I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the actual market values or wholesale prices of the goods, wares, and merchandise described in the said invoice in the principal markets of the country and at the time of exportation are correct and true excepting as changed by me and set forth in the column of consular corrections of estimates.

Witness my hand and seal of office, at Liverpool, the day and year aforesaid.

(Signed) W. J. SULIS,

[L. S.] *Vice & Deputy Consul of the United States of America.*

Received fee for this certificate, $2.50.

187 Telegraph address: Isherwood, Liverpool.

8TH JAN'Y, 1890.

From Hughes & Isherwood, the Albany, Liverpool, to the United States consulate:

Enclosed we beg to hand you Lancashire & Yorkshire Railway Co.'s carriage note, as requested by the Treasury representative. The 13 bs. (407) per "Wyoming" (s) were included in this parcel of 15 bales.

H. & S.

188 Enclosure.

"EXHIBIT B." T. H. S. July 1st, 1890.

Lancashire and Yorkshire railway.

GREAT HOWARD STREET STATION,
LIVERPOOL, *Nov. 9th*, 1888.

Cash and general offices, Great Howard Street station.
Town office for orders and enquiries, 11 Victoria street.
Cartage department, North Docks station.
Goods and timber-receiving depots, Bankfield station, Canada dock (north), and Brunswick docks (south), Sefton street.
Timber-receiving wharf, Mersey station (north).

Advice of Goods.

Messrs. Hughes & Isherwood:

The undermentioned goods, consigned to you, having arrived at this station, I will thank you for instructions as to their removal

hence as soon as possible, as they remain here to your order and are now held by the company—not as common carriers, but as warehousemen—at owner's sole risk and subject to the usual warehouse charges in addition to the charges now advised.

When you send for the goods please to send this note.

The company's stations and warehouses close at one o'clock p. m. on Saturdays; on other workings days during November, December, January, and February at 5.30 p. *m.*, and during the remainder of the year at 6 o'clock p. m. No delivery is made between the hours of 12 noon and 1 p. m. except on Saturdays.

The directors require the carriage to be paid on delivery unless the consignee has a ledger account with the company, in which case the charges herein named will be debited to such ledger account.

It is particularly requested that the charges be examined immediately on receipt of the advice note, and that any objection to them be notified to the company's agent at once, as such objections cannot be recognized after the delivery of the goods.

For the Lancashire and Yorkshire Railway Company:

JOHN C. WINDLE, *Agent.*

The undermentioned Nos. to be quoted in case of enquiry, &c.	From—	Description of goods.	Marks.	Weight. T. C. W.	Rate.	Paid on	Total to pay.
				lbs.		L. s. d.	L. s. d.
1163,372	B'ford	15 B. wool.		318,224			Paid.
J. S.			C. H.	640			

Take samples back.
E. L. Rom.

T. A. FIRTH & CO.

189 "EXHIBIT C." T. H. S. July 3, 1890.

Copy.

Hughes & Sherwood.

LIVERPOOL, 13*th Oct.*, 1890.

Messrs. G. W. Patton & Co.:

We have this day bought for you the following w*ill*, viz:

No. 407—40,000 lbs. Botany waste at 23½d. p. lb.

Bags to be paid for.

Delivered in Liverpool.

Tare, actual; draft, none.

Payment, cash in 14 days (or before delivery if required) without discount.

We are, your obedient servants,

(Signed) HUGHES & ISHERWOOD.

"EXHIBIT D." T. H. S. July, 1890.

Copy.

Hughes & Isherwood.

LIVERPOOL, 13*th Oct.*, 1888.

Messrs. T. A. Firth & Co.:

We have this day sold on your account the following wool, viz:
No 3314—40,000 lbs. white Botany waste at 23½d. p. lb.
Bags to be paid for.
Delivered in Liverpool.
Tare, actual. Draft, none.
Payment, cash in 14 days (or before delivery if required) without discount.

We are, your obedient servants,
(Signed) HUGHES & ISHERWOOD.

Brokerage, 1%.

190 "EXHIBIT E." T. H. S. July 3d, 1890.

(Copy.)

Telegraphic address: "Taf. Bradford."

BRADFORD, *Nov'r 8th*, 1888.

Messrs. Hughes & Isherwood bought of T. A. Firth & Co.

No.	Tare.	Cwt.	Grs.	Lbs.	No.	Tare.	Cwt.	Grs.	Lbs.			
626	11	5	0	16								
627	11	5	1	26								
628	11	5	1	15	(407)							
629	11	5	1	13	Wyoming.							
630	11	5	0	9								
631	11	5	1	11								
632	11	5	1	19	13 bags at 3 —						£1	19 0
633	11	5	0	20								
634	11	5	0	26								
635	11	5	1	6	2 bags at 2 5						5	"
636	11	5	1	12								
637	11	5	0	3								
638	11	5	0	19								
		68	1	27								
		1	1	3								
		67	0	24	7,528 lbs., lot 3314, at 23½ d.						737	2 4
639	9	5	0	11								
				9								
		5	0	2	562 lbs., lot 3317, at 11¾ d.						27	10 3
640	9	5	0	14								
				9								
		5	0	5	565 lbs., lot 3318, at 11¾ d.						27	13 3
											£794	9 10

191 CONSULATE OF THE UNITED STATES,
LIVERPOOL, ENGLAND, *July 15th*, 1890.

I, Thomas H. Sherman, consul of the United States of America at Liverpool, the Thomas W. Sherman referred to in the commission, do certify that Charles P. G. Patterson, Thomas Henry Isherwood, Joseph Knowles, Maximillian Delius, Charles Edward Richards, George William Lupton, Richard Bouley Nicholls, Thomas Leavens Renton, Carl Hermann Holzhaussen, Frederick Whitaker, James Lord Bowes, Arthur Wilson Ronald, and John William Turner, the witnesses, personally appeared before me on the dates and hours and at the places stated on the foregoing depositions, and after being sworn to testify to the truth, the whole truth, and nothing but the truth, did depose in the matters contained in the foregoing depositions, respectively, and that those of them to whom the exhibits annexed thereto were shown did in my presence testify to the same; and I further certify that I have subscribed my name to each half sheet thereof and to each exhibit; and I further certify that on the first day John R. Read, United States attorney, appeared in behalf of the plaintiff, and that Thomas Henry Isherwood appeared in behalf of the defendants, and that on the succeeding days John R. Read appeared in behalf of plaintiff and that T. A. Watson appeared in behalf of the defendants.

THOS. H. SHERMAN,
Commissioner.

192 THEODORE C. SEARCH, having been duly affirmed, was examined as follows:

By the DISTRICT ATTORNEY:

Q. What is your business?

A. Manufacturer. The name of our firm is Erben, Search & Company. Our place of business is Twenty-fifth and Spring Garden. Our factories are at Tacony.

Q. How long have you been engaged in business there?

A. I suppose for nearly twenty years. We manufacture worsted yarns, woolen yarns, mohair yarns, and merino yarns.

Q. Do you use domestic or imported?

A. Both.

Q. Look at this sample. (Referring to sample A.)

A. I have examined it.

Q. In what form was wool imported into this country in March, 1883, or had it been imported into this country prior to that time?

A. It had been imported in the form of unwashed wool and washed wool and some scoured wool.

A. Any waste?

193 A. Yes, sir; I believe there had been considerable kinds of waste imported.

Q. What kind?

A. Of an inferior character to this.

Q. What was it composed of?

A. Composed of wool—wool of a character that would be unfitted for use in the manufacture of worsted yarns.

Q. Describe the different kinds of woolen waste, or the different articles included in the description woolen waste as known to the trade at the time.

A. It would be very difficult for me to describe the different characters of woolen waste that were brought in at that time, not being an importer of any of the material. I only know what was known, what we believed to be known as waste at that time—ordinary waste of importation which are comparatively worthless products that were formed during the manufacture of yarns for the purpose of making cloths, &c.

Q. At that time was there anything like the commodity that you see before you imported?

A. I never saw any at that time nor had I heard of it.

Q. Do you know how long the commodity like the sample A has been imported?

A. None of it to my knowledge was imported prior to 1887, and possibly later than that the date may be. I do not know the exact date.

Q. Have you ever used an article like the sample?

A. No; I have never used any commodity like that sample.

194 Q. Do you know practically how it would be manipulated as a commodity?

A. Yes, sir; I think I know what we would have to do with that sample. If we had these samples we would have to put them back along with our scoured wool and card and comb it again

Q. You would say that was scoured wool?

A. Yes, sir.

Q. And card and comb it again?

A. Yes, sir.

Q. What process of manipulation would woolen wastes that were known in 1883 be subjected to?

A. They would have to go back to be washed. They would begin the process over again from the beginning.

Q. In the waste that you speak of as having been known to the trade in 1883, would they have to be garneted?

A. There are hard ends. There were hard end wastes at that time that would have to be garneted.

Q. That sample A would not have to go through the garneting machine at all?

A. No, sir; not at all.

Q. I presume there is no question about it that the top of which that formed a part is made of scoured wool?

A. There is no question about it.

Q. You have heard the testimony that has been read here by Mr. Carr and myself?

A. Yes, sir.

195 Cross-examination.

By Mr. JOHNSON:

Q. Prior to 1883 did you have any imported waste?
A. No, sir.
Q. So that you had had no dealings prior to 1883 with the imported waste?
A. No, sir.
Q. When first did you buy any imported waste?
A. I never bought it.
Q. Did you buy American waste prior to 1883?
A. No, sir.
Q. So that you have never commercially dealt in the article?
A. No, sir.
Q. And perhaps cannot tell us its commercial designation?
A. I think it is likely I could.
Q. That is a top, is it not (referring to sample of top)?
A. Yes, sir.
Q. That is a manufacture of wool?
—. —— ——.
Q. A manufacture of wool advanced in what stages from the scoured—what different kinds of manufacturing have been done on wool to get it in that shape?
A. That has been carded and combed.
Q. And gilled?
A. Yes, sir; and bag washed also?

Q. And that has been advanced into that stage and degree
196 of manufacture for the exclusive purpose of being thereafter used to make a worsted yarn, has it not?

A. I presume so.
Q. It would have been run into this shape to make a woolen yarn?
A. Not necessarily; some of it may.
Q. So that this article (tops) that you see before you is a manufacture of wool advanced in several stages of manufacture in the process of making worsted yarn?
A. Yes, sir.
Q. The article that you see before you (top) is the article tops broken up, is it not?
A. It looks so. I believe it to be so.
Q. That, of course, is not an article that you would give a commercial designation scoured wool (sample A); it has been scoured, but you would not buy it or sell it as scoured wool?
A. No; you would not buy it or sell it as scoured wool.
Q. Have you during the last few years bought any broken top?
A. No, sir.
Q. What is the commercial designation of the article before you (sample A)?
A. I believe the commercial designation of that to be broken top.
Q. And broken top is what—necessarily a waste, is it not?

A. No; we do not call it so.

197 Q. Have you known it under a commercial designation?

A. No; I have not known it. It had been offered to me to buy as broken top—offered to me to purchase.

Q. How late?

A. It was offered to me at the beginning of this enterprise—about 1887. I was in Europe at the time. I think it was 1887; it was then offered to me for the first time as broken top.

Q. This waste which was dealt in—how would that be treated when it was bought—it would have to be recombed, would it not?

A. The hard waste?

Q. Yes; the waste that you say you were familiar with.

A. There was a hard waste, which would have to be garneted, that could only be fitted for woolen yarn, and all the waste I was acquainted with was only fitted for woolen yarn and not good combing product like this.

Q. Have you ever tried to make a worsted yarn from that broken top?

A. No; we have made a very similar product into top.

Q. What is top waste?

A. There is a great difference of opinion as to what top waste is.

Q. I have asked yours.

A. A top waste is a thing that is practically unknown in our mill.

Q. You know in the new tariff act there is an article spoken of as top waste. What is that article?

198 A. I have nothing to do with that. That is to be decided what it is.

Q. State whether you know what that article that is spoken of in the tariff act as top waste is.

A. No. You take that top and pass it through a gill-box preparatory to making the first drawings you often leave a lap formed from that on the apron which is connected with machine. It commences in a very small way, very frequently a few fibres of that top, and it passes through and adheres to this leather apron and passes around it; the leather apron is perpendicular to the machine. It is put there to keep the iron roll through which it passes from getting wool fibre, and it adheres to this apron. It finally gets there in such quantities as to break up the whole top; sometimes the whole of it will adhere, generally a portion of it, splitting that top. It does not destroy it in any other way, but simply splits it. When it gets in that condition the operator stops the machine, breaks it apart, and starts the machine running again, and while it is running carry off the part which has attached itself to the leather apron; that part will probably be three feet long, and by some might be considered top waste. We return it right back on the machine, it passes right on through the next time, and comes out exactly as if it was intended to come out the first time. It makes no waste with us.

Q. That might be top waste?

A. That might be called top waste.

Q. It is longer a good bit than those pieces there?

199 A. Yes, sir; it is longer than these; three times as long as this (A). It runs from two to three feet in length.

Q. Suppose that was broken into pieces as small as that (indicating), it would still be top waste.

A. Yes, sir; if it was broken into piece as small as that it would be top waste.

Q. Then you would not run it through?

A. No, sir.

Q. That being genuine top waste, tell us how that would be treated in order to get into any commercial article?

A. That would then go back into your card, as I described this would have to be done (A).

Q. That thing which would be top waste, and which would be so treated, would be an article which would resemble that before you (A)?

A. Yes, sir.

Q. And differ in no respect from the article before you, would it?

A. Not if it was broken up.

200 THEODORE JUSTICE, having been duly affirmed, was examined as follows:

By the DISTRICT ATTORNEY:

Q. What is your business and where do you live?

A. I am a wool commission merchant. I live in Philadelphia.

Q. How long have you been familiar with the article commercially known as wool?

A. Twenty-six or twenty-seven years.

Q. Please state what was the ordinary condition in which wool was imported into this country in March, 1883.

A. Wool was imported in the unwashed condition, in the fleece-washed condition—that is, washed on the sheep's back—and to a limited extent in the scoured condition. Very little wool is ever imported in the scoured condition.

Q. I am speaking of March, 1883.

A. Yes, sir.

Q. Unwashed means in the fleece?

A. Usually.

Q. You will notice the sample that is before you (sample A) and examine that, if you please.

(Witness examined sample.)

Q. State whether or not that article is in the condition in which wool usually was imported in March, 1883.

A. I never saw any wool imported in this condition previous to 1888 or 1889.

Q. You are familiar with the article known in the wool trade as wool waste, are you not, in 1883?

201 A. Yes, sir; I have sold it frequently during the past twenty-seven years.

Q. Please state what, in March, 1883, was the article known to the trade as woolen waste.

A. The only wool waste that I had ever seen previous to that was an article worth from five to ten cents a pound taken off of cards called card waste or taken from the spinning-room and called thread waste; sometimes called yarn waste. Card waste is taken from the card-room.

Q. State whether or not the article before you (sample A) was the article that was known in trade in March, 1883, as wool waste.

A. It has no resemblance to it.

Cross-examination:

By Mr. JOHNSON:

Q. Did it resemble an article which you called worsted waste?

A. I never saw anything called worsted waste previous to 1883.

Q. I am asking you whether it resembled an article called worsted waste. I am not putting you down to dates.

A. No, sir; not what I am familiar with.

Q. There was an article that you did call worsted waste, was there not?

A. There is an article been named worsted waste during the past three or four years.

Q. And which you named worsted waste?

202 A. It is so known as worsted waste.

Q. How did what you called worsted waste differ from the article before you?

A. Worsted waste showed evidence of being an accident which befell the wool during its process of manufacture.

Q. How about the thing? No matter whether it was produced by accident or not. How did the thing which you called worsted waste differ from the thing before us?

A. It showed that it had been in various processes of manufacture; it was soiled and tangled and showed various degrees of progress through the manufacturing process.

Q. That shows a degree of progress through a manufacturing process?

A. This does not show various degrees of process.

Q. It shows one degree. Suppose you had taken the waste that you knew, which showed various degrees of manufacture, would it not be sorted?

A. It could hardly be sorted to produce anything like this.

Q. It could be sorted, could it not?

A. It is possible.

Q. If it was sorted, the thing which was sorted at the best would still be waste, of course?

A. Yes, sir.

Q. That would not show various degrees, but would show one stage of progress in manufacturing, would it not?

A. It would show something which is not visible in this.

Q. Suppose that you had a top and you found that the
203 top was off color and could not be sold as a commercial top, would not the destruction of that top, the breaking up, make a waste?

A. I should think not.

Q. You would think, therefore, if a top was so spoiled, either by getting off color or getting too thin or something else in the process of manufacture, that it could not be sold as top, could not be used for worsted yarn and had to be broken up; that that would not be a waste if it was broken up?

A. Not such a waste as I have seen and known as worsted waste.

Q. Of course you might not have seen a particular kind of waste and yet might have an opinion of a general article. Would not that be, if broken up, because of its unfitness for the purposes for which it was manufactured, a waste?

A. I should say it would not resemble such waste as is commercially known as worsted waste.

Q. Do you mean it would be better in quality?

A. It would be better and different.

Q. Take this sample in colors and tell us whether that is what is commercially known as woolen waste. (Defendants' colored sample shown witness.)

A. I see no evidence that this is waste.

Q. Then you would not think it would be sold as waste?

A. No, sir; this appears to have been broken from the ball, the top.

Q. Have you bought and sold this article known as
204 worsted waste?

A. Yes, sir; I have sold an article commercially known as worsted waste.

By the COURT:

Q. Such as you describe?

A. Yes, sir.

By Mr. JOHNSON:

Q. It was a waste made in what process of manufacturing?

A. In the process of spinning worsted yarn.

Q. Therefore it was naturally full of hard ends?

A. Some hard ends.

Q. And threads?

A. Somewhat.

Q. Is there not waste, however, in every process of manufacture of the wool up to the finished yarn?

A. Yes, sir.

Q. In one set it will be softer, a good bit, and in another set harder than another?

A. There are various degrees.

Q. Some is soft waste and some is hard waste, is it not?

A. All mixed together.

Q. There is no need of it being mixed together?

A. What is known as worsted waste is usually all mixed together.

Q. There is no reason why it should be mixed together?

A. Yes, sir; I think there is a very good reason.

Q. Why?

205 A. Because it is gathered up in the accident that befalls the wool in its process through a machine.

Q. Suppose a man, as in England, subdivides the manufacture and only does a certain process of the manufacturing, he would make waste, would he not?

A. Yes, sir.

Q. His waste would not represent the waste of other sorts of manufacturing he did not do, would it?

A. All I have ever seen has all been swept together in a heap, all kinds, and it is impossible to sort it without leaving traces of that previous mixture of all kinds.

Q. There is no earthly reason why it should not be sorted out if it got mixed that way—it should *not* be kept sorted and never mixed—is there?

A. I never heard of its being so treated that way; it is possible.

Q. What is the article before you? Is it scoured wool, commercially so known, or could it be commercially sold as scoured wool (sample A)?

A. This is not the scoured wool of commerce. It is changed from the condition of scoured wool of commerce.

Q. The commercial designation of the article before you is not scoured wool, is it?

A. No, sir, that is not its commercial name.

Q. I call your attention to this top that the Government has here. This is a manufacture of wool, is it not?

A. Yes, sir.

Q. Advanced in a considerable stage of manufacture?

206 A. Yes, sir.

Q. And this is not the wool of commerce and would not be sold commercially as wool?

A. No, sir.

Q. What is top waste?

A. I never heard of top waste.

By the DISTRICT ATTORNEY:

Q. Looking again at the sample of the importation before you (sample A), state whether or not there is any evidence of that being off color or of its having been thinned.

A. There is no soil on that.

Q. Is there any reason, so far as you see, why that article could not have been used had it remained in the form of a ball or top?

A. No.

207 BENJAMIN FIRTH, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live and what is your business?

A. I live in New York. I am in charge of the worsted department of E. S. Higgins & Company, New York.

Q. What is their business?

A. Manufacture of carpets.

Q. What is the size of their business; extensive or otherwise?

A. Yes, sir; it is very extensive.

Q. How long have you had knowledge of the article commercially known as wool?

A. For fifty years.

Q. You are familiar with the conditions in which this article of wool was imported into this country in March, 1883?

A. Yes, sir.

Q. State what were the conditions or forms in which wool was imported in March, 1883.

A. We had what we call unwashed wool, washed wool, and scoured wool.

Q. You have examined the sample that is before you (sample A)?

A. (After examining): Yes, sir.

Q. State whether or not in March, 1883, wool was imported into this county in the condition in which that sample is.

208 A. That is the first knowledge I have of that style of stock under the name of wool or whatever you term it. I have no previous knowledge of stock being imported in that shape up to this time.

Q. Until you examined this particular sample?

A. Yes, sir.

Q. As to waste. Of course, you are familiar with the article known as wool waste?

A. Yes, sir; I am familiar with the waste made in the process of manufacture.

Q. In March, 1883—are you familiar with the article commercially known as waste at that time?

A. I am not speaking as to commercial matters. I have no experience outside of the factory. My business is manufacturer.

The DISTRICT ATTORNEY: What was known among people engaged in the same trade as yours?

The COURT: Dealing in wool, whether as manufacturers or otherwise.

A. Not being on the market of buyers or seen samples, I cannot say. My experience is confined to the waste made in manufacturing.

By the DISTRICT ATTORNEY:

Q. State what, in March, 1883, was known as wool waste.

A. There was waste called hard wastes, made in spinning; there are wastes in the process of carding; there is waste in burring and

dusting of wool, and very little waste made betwixt the
209 preparing and the spinning. Those wastes are generally yarn, and the factory term is waste. At the same time they are superior.

Q. That article before you, which you have just examined, sample A—state whether or not that, in March, 1883, was known in the trade as a wool waste.

A. No, sir.

At 1 p. m. court took a recess until 2 p. m.

Cross-examined.

By Mr. JOHNSON:

Q. As I understand, you are engaged in manufacture at a worsted mill yourself. Your duty is not and has not — to buy or sell the wool?

A. That is correct.

Q. Therefore what the things are called in commerce you have not had occasion to ascertain?

A. No, sir.

Q. Of course, you know the article well enough to know that that (indicating) would not be an article which would be accepted as scoured wool by any commercial designation?

A. My experience teaches me that is manufactured from scoured wool.

Q. It is manufacture of wool. Of course, in all wool manufactures you must scour wool before you begin to make the manufactured article. You do not make any manufactured wool until you have scoured the wool?

A. For work of that kind we scour.

Q. And this is a manufacture from scoured wool?

210 A. Yes, sir.

Q. There are, of course, various degrees of fineness of waste—some waste is finer in quality than others?

A. Yes, sir.

Q. Some are soft and some are hard?

A. Yes, sir.

Q. They differ very greatly.

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. How many years did I understand you to say that you had been in this business?

A. I have been in the factory fifty years. I went in as a young boy.

211 THOMAS A. CAMPBELL, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You live in New York?
A. Yes, sir.
Q. In what business are you engaged?
A. I am a buyer for T. S. Higgins & Co., carpetings.
Q. For what length of time have you known the article commercially known as wool?
A. Fifty years.
Q. Please state in what condition this article was imported into this country in March, 1883—I mean the article of wool.
A. There are various kinds of wool.
Q. State the conditions in which it was imported in March, 1883.
A. Carpet wools were both in the unwashed and washed condition.
Q. Was it imported in any other condition?
A. No, sir.
Q. I mean wool other than carpet wool.
A. That is all I know.
Q. Was it imported scoured or not?
A. That I don't know.
Q. You have seen the article that is before you (sample A); have you examined it?
A. I have.

212 Q. State whether or not that article is in condition such as wool was imported in March, 1883.

A. I think it is in an advanced condition.
Q. The question is whether you ever saw a commodity like that imported prior to 1883?
A. I did not.
Q. You are familiar with the article wool waste?
A. Yes, sir.
Q. In March, 1883, what was the article known as wool waste?
A. I don't know anything about wool waste in 1883.

Cross-examined.

By Mr. JOHNSON:

Q. You have dealt with carpets. You were the superintendent of Higgins' Carpet Manufacturing establishment, which is one of the largest in the United States.
A. Yes, sir.
Q. Your familiarity has been with those coarse carpet wools, those are the classes that you have dealt in?
A. Yes, sir.

213 MITCHELL STEAD, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You live in Philadelphia?

A. Yes, sir.

Q. What is your occupation?

A. I am with Folwell Brothers & Co., spinners and manufacturers of fine ladies' dress goods, coatings, linings, and things of that character.

Q. For what length of time have you known the article known as wool commercially?

A. Commercially I have not known it at all. My whole experience has been devoted to mill life. I have never been a purchaser of wool in any way, shape, or form. I have worked it and known it almost since a boy.

Q. Have you examined sample A, which is before you?

A. Yes, sir.

Q. That has been scoured, has it not?

A. Yes, sir.

Q. Please state just what the process has been upon that article that is before you to get it into that state—I mean from the raw wool?

A. It would be first taken from the bales, sorted, graded, washed, carded, then backwashed, combed, and then *and then* put into top.

Q. What next has been done with this?

A. That I don't know; I don't know what has been done to it since.

214 Q. Top is in that condition?

A. Yes, sir.

Q. What is the article known as wool waste in March, 1883?

A. I am not posted, simply because I never bought wool; I only know of the interior workings.

Q. What is the first process or first manipulation that the article has been subjected to in order to be used, card it?

A. What would you be going to do with it?

Q. What could be done with it?

A. It would be simply converted into top again.

By Mr. JOHNSON:

Q. You are a yarn manufacturer, among other things?

A. Yes, sir.

Q. In manufacturing yarn you take scoured wool and put it through your process of manufacturing, of which this top has already gone through several, and wind up with it as yarn, do you not?

A. Yes, sir.

Q. You commence from the scoured wool and put it through all the various processes up to this and finish it out as yarn?

A. Yes, sir.

Q. In England, I think, they subdivide the processes of manufacturing more than here?

A. Yes, sir.

215 Q. But here the customary way of making yarn, or, at any rate, your way, is to take scoured wool and put it through the various processes until it reaches this point and go right on from this point until the yarn is finished?

A. Yes, sir.

Q. And this is, therefore, a manufacture of wool in a considerably advanced stage towards the process of making yarn?

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. You said you would make that article there into top again. How would you make it into top again?

A. I couldn't tell you exactly how unless I was to try it, but I could convert it into top.

Q. I ask you from your experience and observation of the article.

A. I know that it could be converted into top again by means of carding it and using it as you would use scoured wool—putting it through the cards and combing it again. I know it could be done that way.

216 ROBERT N. KITCHING, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. In New York. My occupation is examiner of wool for the port of New York at present.

Q. For what length of time have you known the article of wool commercially?

A. Since 1847.

Q. What were the conditions in which wool was imported into this country in March, 1883?

A. The unwashed and washed state and the scoured state.

Q. That is, when it was washed or unwashed it was in the fleece?

A. Yes, sir.

Q. You have examined sample A before you?

A. Yes, sir. I think it is the same wool or the same article that I saw at the custom-house in New York.

Q. Please state whether the condition in which that article before you is now is or is not the condition in which wool was ordinarily imported in March, 1883.

A. No, sir.

Q. You are familiar with the commercial article known as wool waste in March, 1883?

A. Yes, sir.

Q. What was that article at that period?

A. It consisted of the various kinds of waste—lap waste, roving, thread waste, garnetted waste, and so on.

217 Q. How were those different articles produced?

A. In the regular process of manufacturing woolen goods into woolen yarn.

Q. State whether or not sample A is what was known as wool waste in March, 1883.

A. No, sir; not in this condition. There might be pieces like this contained in an article known as waste which was a mixture of roving waste, thread waste, and lap waste.

Q. In the absence of slubbing, roving, and thread, you say that this article is not what was known in March, 1883, as wool waste?

A. I do.

Q. Wherein and in what respect does this article before you differ from that which was known as wool waste in March, 1883?

A. This appears to be all top or lap waste.

Cross-examined.

By Mr. JOHNSON:

Q. I suppose, if there was slubbings in that, then you would say that that was waste such as you were familiar with?

A. If it comprised all the different qualities of waste that were known; yes, sir.

Q. You would not condemn that as waste if you had a bale in which these slubbings were?

A. Plenty of it. It ought to be a regular mixture.

Q. Therefore, in your judgment, it becomes or is not waste
218 according to the quantity of other sorts of waste mixed with it. That is so, is it not?

A. Yes, sir.

FRANCIS H. TAGGART, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You are a United States examiner in Philadelphia?

A. Yes, sir.

Q. How long have you known the article wool commercially?

A. I have been an examiner of wool since October, 1885.

Q. Before that time what were you?

A. Before that time I was an examiner of miscellaneous merchandise, not wool.

Q. Have you examined sample A?

A. Yes, sir.

Q. How long have you known that article as being imported in this country?

A. I never saw so good as this imported. I have nothing that has come before me that was all as good as this article.

Q. Never at any time?

A. No, sir.

Q. How does that differ from the articles that have come before you as wool waste?

A. There is thread waste, garnetted waste, hard ends, mixed waste consisting of roving, slubbings, and some broken
219 tops, thread waste—all mixed together—I have had frequently, but never all top; not in a white condition.

Cross-examined.

By Mr. JOHNSON:

Q. (Referring to defendants' samples:) You passed as wool waste in colors stuff quite as good as the quality in that?
A. Different colors in the bale.
Q. But quite as good in quality as that?
A. I think not so long as that. It was in shorter pieces.
Q. But in other words, you passed as wool waste in colors quite as good a waste as that, have you not?
A. No; I think not.
Q. Pretty near, though?
A. Well, I have passed a lot of colored wool waste, with all sorts mixed.
Q. This (indicating) is top waste, as I understand, is it not?
A. Yes, sir; that is rove broken top.
Q. Your testimony is that in the waste that you passed as such you have passed in combination with other kinds of waste, and as waste, top waste, quite as good as that?
A. Some of it; yes, sir.

By the DISTRICT ATTORNEY:

Q. The waste that you have passed, that Mr. Johnson has just referred to, was mixed colors, was it not?
220 A. Yes, sir.

By Mr. JOHNSON:

Q. The colored top waste that you passed as wool waste had nothing but top waste in, had it?
A. It was mixed—different kinds. I could not say that it has not some thread in it.
Q. But substantially we might take it that what you passed as wool waste in color was practically all top waste?
A. It was known as lap, Botany lap waste.

THOMAS SCOTT, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You live in New York?
A. Yes, sir. My business is wool.
Q. How long have you known wool as an article of commerce?
A. Thirty years.
Q. What were the conditions or forms in which wool was imported into into this country in March, 1883?

A. Washed, unwashed, and scoured.

Q. Washed and unwashed in the fleece and scoured?

A. Yes, sir.

Q. Do you mean scoured in the fleece?

A. There could be such a thing as scoured in the fleece, but generally it was not.

Q. Have you examined sample A?

221 A. Yes, sir.

Q. Please state whether or not it was in such condition as wool was imported in March, 1883.

A. No, sir.

Q. You are familiar with wool waste as imported in March, 1883?

A. It was not imported.

Q. What kind of wool waste was imported in March, 1883?

A. As I understood it there was no profit in importing low-grade waste.

Q. I have not asked you that. In March, 1883, was wool waste imported?

A. I do not think it was, except a limited quantity.

Q. Those limited quantities, what was the article; was it thread waste?

A. I couldn't say. I don't know.

Q. What is the first time that you noticed an article similar to that which you see before you in sample A?

A. I have seen it in the market; I have seen samples of it for the last two or three years.

Q. And not prior to two or three years?

A. No, sir.

Q. Where did you see that; was it in this country?

A. Yes, sir.

Q. Was it imported or domestic article?

A. It was offered by Bradford brokers; young men in New York who have agents in Bradford. They have correspondence with Bradford agents. Two or three of them are continually

222 bringing in these samples and showing them to me and I refuse to have anything to do with them whatever, but I am perfectly familiar with them from the beginning—from the time the first 10,000 pounds was imported.

Q. What is the difference in value between sample A and scoured wool of the same character?

A. Scoured wool as known abroad, which I suppose you mean to refer to, is more or less greasy and wasty. It shrinks all the way from ten to thirty per cent—all of it—that is, the scoured wool that comes—not the scoured wool that is in the woolen mill, but the scoured wool that comes.

Q. Then, do I understand you to mean by that reply that, taking exactly the same character of wool as is illustrated by that sample, that in that form it is of as much if not greater value than scoured wool?

A. Of greater value—from ten to thirty per cent. That is perfectly pure.

Cross-examined.

By Mr. JOHNSON:

Q. What would scoured wool in America of this quality be worth at the present time?

(Objected to.)

Q. There is scoured wool of this quality sold in America?
A. No; it is not imported scoured.
Q. Is there not wool made out of a fleece of no superior quality to this and scoured that is sold?
223 A. I do not think it is offered in the market. It would not pay. You mean scoured foreign wool?
Q. No; I mean any wool.
A. We are talking about foreign wools.
Q. Of course all wool comes from the fleece, and it is scoured. Now, take wool from the fleece as good and as fine as that is made and scour it, what would that wool be worth at the present time?
A. That I couldn't tell you, because I have never scoured it.
Q. But you have bought scoured wool?
A. No, sir; not of that quality.
Q. Not as good as that?
A. It is not offered here in that condition. I do not think anybody here can offer foreign scoured wool.
Q. What is to prevent it?
A. Because it is not imported in a scoured condition.
Q. Then take American wool?

(Objected to as not cross-examination.)

Q. (Indicating:) This is top waste, is it not?
A. I should call it broken top.
Q. Wouldn't you also call it top waste?
A. No, sir.
Q. What was the article that you saw like that offered to you called?
A. It was generally a nameless article.
Q. Would the person call it a nameless article?
224 A. Yes. They generally said they had something like this—what can you use this for? There has been doubt — this thing for the last ten years, and everybody has been afraid to touch it.
Q. That thing before you is, of course, not scoured wool; not commercially known as scoured wool?
A. No, sir; it is not what you would call commercially scoured wool. It is superior.
Q. But it is a manufacture of wool?
A. Yes, sir; that is, it was a manufacture.

RICHARD CAMPION, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. Philadelphia. My business is selling for several worsted-yarn mills at present.

Q. How long have you known commercially the article of wool?

A. Seventeen years as a manufacturer, and three years I have been selling it. I have been twenty years identified with worsted-yarn manufacturers.

Q. What were the conditions or forms in which wool was imported in March, 1883?

A. I would not be able to tell you that except on the general commercial wool, such as we bought in the market here—Australian wool, unwashed, washed, and scoured.

225 Q. You have examined sample A?

A. I have not seen it except in other people's hands.

(Witness examines same.)

Q. State whether or not its condition is like the condition of wool in March, 1883, that was imported into this country.

A. I never saw or knew of any like this at that time.

Q. When did you first see such an article as that sample A?

A. I never saw anything exactly like this. I have seen stuff mixed with waste and thread, but I never saw clear top like that until this.

Q. Without any waste at all?

A. Without any waste at all, in my judgment.

Q. What was the article wool waste in March, 1883, that you knew?

A. That I am not able to say?

Q. What is wool waste; how is it produced?

A. There is card-fly, which is waste—the waste product that comes off the cards. It is also a noil produced in combing off the combs. That is a waste product; not so called, however.

Q. That is called a noil?

A. Yes, sir. Then there is the hard ends—a doubling of the yarn and in the snarled-up ends in spinning. That is garnetted up and called garnetted waste—used for woolen yarn.

Q. What other wastes are there?

226 A. There is an article called shorts in commerce. That is a waste product from worsted mills, made in sorting.

Q. That is before it has been scoured at all?

A. Yes, sir; or anything else. These shorts are the short wools that would not go in to make worsted yarn of, and they do not put it through the machinery, but eliminate it in the sorting process—shorts. That is sold scoured, and sometimes sold unscoured in an unwashed state, as the man running the mill may choose. It is a bi-product of waste.

Q. What others are there that you can think of?

A. Those are the only things that were sold out of a worsted wool within my knowledge of seventeen to twenty years as waste—the only thing sold out of it except the finished product 99 yarn.

Q. And the other accidents in the manufacture of yarn were reused in the same mill?

A. Yes, sir.

Q. What would be first done to sample A, before you, in order to put it into yarn?

A. If it was mine I should first try to just gill it. I should not put it over the comb until I found I could not make good worsted yarn without. I would put it right through the draw—right through the gill-box. I should try that at all events before risking taking any of the shorter fibres out of it.

Q. The gill-box is the last machine that it has been through before it was broken?

A. That may have been through the gill-box. There is
227 a gill-box attached to the comb, or there is a balling box which comes next to the comb that produces the ball like that. There are combs that produce balls exactly like that. It was a process that has been to a great extent abandoned. It runs off the comb into a can and then those cans are taken and put up behind the balling box and it is gilled at that time. It goes into a ball like that at the top.

Q. Is that the process which you say you would use with that?

A. Yes, sir; or put it through the gill-box similar to the ones attached to the ball-box, just to straighten and get it even.

By the COURT:

Q. That would restore it to that condition?

A. Yes, sir—that is, theoretical. I never tried it. I believe it would make good worsted yarn without ever touching the comb again. That is my individual opinion.

By the DISTRICT ATTORNEY:

Q. If you found that you could not use it at such an advanced stage of manufacture of yarn, then what could you do with it?

A. I would then comb it; put it on the combing machine, but I do not think that requires any combing. In my opinion, I do not think it would have to get back that far.

Cross-examined.

By Mr. JOHNSON:

Q. Have you ever had any experience with that process?
228 A. No, sir.

Q. As I understand, you are a worsted-yarn manufacturer and have not bought or sold yarn.

A. No, sir; I have not, except as a *bi*-product of our own mill.

Q. Your experience has not therefore been in the commercial designation of this article?

A. No, sir.

Q. Your process of manufacture is this, you get scoured wool, do you not?

A. No, sir; we scour it ourselves.

Q. You get the raw wool and scour it. In making yarn, then, you reach an advanced stage in the manufacture of yarn?

A. Yes, sir; it has gone through the comb?

Q. Do you remember being asked on a certain occasion what you call broken tops in your mill and you said you called them drawing waste?

A. Yes, sir.

Q. That of course was accurate?

A. Yes, sir.

Q. So that this you would call top waste, wouldn't you?

A. That is a term I never heard until now. I would call that combing-room waste in the mill. It is uniformly called that. That (indicating) is not such stuff as that. I never saw any such stuff as that.

Q. Still, if you were asked, without knowing how it was made, to define it, you would call it waste?

229 A. No, sir; I would call it broken top, just as I did on a former occasion.

Q. You called broken tops drawing waste. Now, why wouldn't you call those broken tops waste?

A. That may and in all probability never has been in a drawing-room. It could not be called drawing-room waste.

Q. Still it would be waste, wouldn't it, if it was broken?

A. Not in my opinion at all. It is not waste.

Q. It is not scoured wool, that is certain.

A. Yes. On the contrary, it is scoured wool.

Q. But I mean commercially it is not what is known as scoured wool?

A. No.

Q. It is a manufacture of wool?

A. Wool scoured and combed; scoured, carded, combed, and gilled.

NATHAN FOLWELL affirmed and examined—

By the DISTRICT ATTORNEY:

Q. Where do you live?

A. Near Philadelphia. My business is in this city. We are manufacturers and jobbers of dry goods.

Q. You are connected with what mills?

A. The Collingwood mills.

Q. That is a very large establishment in Philadelphia?

A. Yes, sir. The firm is Folwell, Brother & Co.

230 Q. For how long a time have you known the article wool commercially?

A. Since 1879.

Q. You are familiar with the forms and conditions in which wool

was imported into this country in March, 1883? State what those conditions were in March, 1883.

A. They were imported washed and unwashed.

Q. In any other way?

A. No other way.

Q. Have you examined sample A before you?

A. That is the same that I examined in the district attorney's office.

Q. Please state whether the condition in which you see that is one of the conditions in which wool was imported in March, 1883.

A. We never imported anything like it.

Q. When did you first see wool imported in the condition the sample A is in?

A. I saw similar wool about two years ago.

Q. Never before that?

A. Never before that.

Q. You are familiar with what the article wool waste was in March, 1883, are you not, as it was bought and sold and used in the trade?

A. Well, we sold out worsted waste and wool waste.

Q. What was it generally sold—what was the article wool waste in March, 1883?

A. Various kinds of waste—hard ends, sweepings, and
231 different things.

Q. The hard ends come from what step of the process?

A. Mostly in the spinning.

Q. That was after the wool had been in the form of the top?

A. Yes, sir.

Q. Suppose in bringing it into the form of top there had been an accident, would you have sold that or used it over again in the mill?

A. We would have used it over again.

Cross-examined.

By Mr. JOHNSON:

Q. Suppose you would not have wanted to have used it over again and would have sold it, what would you have sold it as—waste, of course, wouldn't you?

A. I don't know that we could call it waste; it was advanced top.

Q. Suppose you did not want to use it; that you had broken it; broken small pieces off your tops and did not want to use it, and had to sell it, what would you have sold it as? Wouldn't you have been obliged to have sold it as top waste?

A. Not having anything of the kind, it is hard to tell that; we might have called it waste.

Q. You could not have sold it as scoured wool, of course?

A. No; it would not be in our line of business to sell
232 that kind, because we would use it over again; any mill that could use it would.

Q. Practically you have had no experience in either buying or selling waste?

A. Yes; in selling it. We sold our own.

Q. Is it not a fact that if you had not used those broken tops again in your business and had sold them you would have sold them as waste just as the other parts of your manufacture were sold as waste?

A. We might have sold them as waste if we had had such a thing to sell.

JOHN T. BOTTOMLY, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. You live in Philadelphia?

A. Camden.

Q. You are connected with what firm?

A. S. T. Stitt & Co.

Q. How long have you known the article wool commercially?

A. From boyhood up.

Q. What were the forms or conditions in which it was imported in March, 1883?

A. Washed, unwashed, scoured, and pulled. Some pulled wools were imported.

233 Q. You have noticed the sample marked A before you and examined it heretofore, have you not?

A. Yes, sir.

Q. Is the condition in which you see that one of the conditions in which wool was imported in March, 1883?

A. I never saw it as such.

Q. When did you first see wool imported in such a condition?

A. The last few years.

Q. About how many years?

A. Possibly two or three years; not later than that.

Q. You are familiar with the meaning of the term wool waste in the trade in March, 1883. State what was included in the trade under that name at that period.

A. Hard ends and stuff that could not be used over again in the material which the mills wanted it to be used in. There were noils, clippings from wool. You would not call that waste exactly, but clippings, and we would call a noil a noil. Waste was stuff that fell on the floor during the manufacture, and was dirty and not desirable to use over again in the process of manufacture. It could not be used in the original article.

Q. Was the article before you in March, 1883, known by the term wool waste?

A. I never saw it in 1883, and I should not call it wool waste.

234 Q. This wool has been scoured, as has been testified to by all the witnesses. What is the difference in value of sample A and the scoured wool of the same quality and character commercially? Is there any difference in value?

A. The difference would be in favor of the sample.

Q. Why?

A. Owing to the fact that it has been freed from noils and will shrink less than ordinarily scoured wool on account of the process through which it has gone since scouring; this has the noil taken out and is a very nice long fibre, with nothing of the short in it, and would be preferable for that reason. It will not shrink as much as the ordinary scoured wool of commerce.

Cross-examined.

By Mr. JOHNSON:

Q. Did you buy any scoured wool in November, 1888?

A. We did not buy any quantity; I don't remember buying any.

Q. About that time what was scoured wool selling for?

A. I could not say.

Q. State about as to that quality.

A. Before I give an opinion I would rather look at my books.

Q. Can you not give us a general idea?

A. We did not buy any scoured wool of any quantity, so that I cannot say. We buy all our wools in the greased condition and use them in that way. We simply estimate at what I know our scoured wool cost us. We scoured our wools from the fleece.

235 Q. Did your testimony as to the different values of scoured wool and of that stuff before you rest upon any practical experience of what they sold for here?

A. My only experience is what I would judge it was worth.

Q. Did you have actual experience of what they did sell for from which you could testify?

A. Naturally I have to be very familiar with the quotations of wool all the time.

Q. Were you familiar with the quotations of that article?

A. I never saw much of that excepting what was offered us for sale.

Q. At what price was it offered you?

A. I should judge it would have cost in the neighborhood of seventy cents or over, but I don't remember exactly.

Q. Was it offered you at that price?

A. I can't remember exactly. The wool was brought in and I was asked what I would call it; if I would call it waste. I said, No; I would not call it waste. What is it worth? I can't remember just what the price was, but it was nearer seventy than it was ten. That is all I can tell you.

Q. What was scoured wool selling for at that time?

A. I know what it would have cost us about that time.

Q. I mean Australian, the same kinds as yours.

A. It would have cost, probably, a little more than that.

Q. You have been engaged in the manufacture of yarn, have you not?

236 A. Yes, sir.

Q. Do you draw any distinction between worsted waste and woolen waste?

A. Yes, sir.

Q. Were not broken tops a kind of woolen waste or worsted waste?

A. No, sir.

Q. Then, if it was the fact that the United States Government recognized broken tops as woolen waste or worsted waste, that was not in accordance with your judgment?

A. Not in accordance with my ideas of the stuff.

Q. That is a manufacture of wool, the thing that you have before you, is it?

A. That is wool that has gone through process of manufacture.

Q. That is a part of the manufacturing process which is necessary to go through before you make yarn. Did you ever deal in the article of waste in buying it at any time?

A. Yes; we have bought some of the foreign waste to see how far it would go and what we could do with it.

Q. When first?

A. I should judge about five years ago.

Q. In drawing your tops do you sometimes break them?

A. Do you mean purposely or accidentally?

Q. I mean either way.

A. They do get broken occasionally and get lapped around a roller.

Q. If you could not use them, what would they be, waste?

237 A. Do you mean in the condition that is? They would be tops if they were not broken.

Q. Suppose you were drawing that top and broke it, what would the thing be which was broken off?

A. Broken top.

Q. If you had to sell it what would you sell it as, waste?

A. Broken tops.

Q. How would that differ as a waste in process of manufacturing from waste resulting from garnetting?

A. From the simple reason that garnetted waste is a waste made from thread which has been broken up, and the fibers are thereby shortened. It is not unfitted for use. They can be used over again and made into the same article as that upon the table. Garnetted waste would have to go into woolen yarn or an inferior article.

Q. Suppose that you broke off a lot of ends through accident or any other cause and could not use them for any process of manufacturing and had to sell them, wouldn't you be obliged to sell them as waste?

A. No; I would simply tell the man they were broken tops and ask a pretty good price for them.

Q. Is there any such thing in commerce as broken tops?

A. I should call that broken tops. I so named it.

Q. That is because it is such that you call it?

A. Yes, sir.

Q. Broken tops describes the fact that it is a top which has
238 been broken; but what is the name under which it is sold? Do you know?

A. There never was any exact name given.

Q. What is top waste?

A. Top waste might be called the waste which would go around the apron on the top rolled and be taken off afterwards, which would be put again onto the same lap and rolled over.

Q. It would be top waste?

A. If it was used right over.

By the DISTRICT ATTORNEY:

Q. Did you ever know of a worsted manufacturer selling a bale of top that was broken?

A. Well, perhaps, if he was closing up his business. I do not remember of any such instance.

WILLIAM H. GRUNDY, having been duly sworn, was examined as follows:

By the DISTRICT ATTORNEY:

Q. What is your business?

A. I am a spinner of worsted yarn at Bristol, Pa., the Bristol worsted mill.

Q. How long have you known the article of wool commercially?

A. About thirty-five years.

Q. In March, 1883, what were the conditions in which wool was imported to this country?

239 A. Generally in the fleece, washed and unwashed, very little scoured.

Q. But some?

A. Yes, sir; some.

Q. You have examined sample A before you, the importation in suit?

A. I saw it in your office.

Q. Please state whether or not its condition is one in which wool was imported in March, 1883.

A. It is not.

Q. What is the difference between its condition and those that you have mentioned—having been imported in March, 1883?

A. Are you now referring to waste?

Q. No; I speak of the sample before you. You say it is not in the same condition. What is the difference?

A. This is a very pure article. It is in the highest condition that you can have wool. There has been never anything approaching this ever thought of in 1883 as an article of commerce to bring to this country.

Q. As to wool waste, what was the article known as wool waste in March, 1883?

A. Wool waste is an inferior article, an article of small value, rather rejections, such as wastage in washing, the sinking of the

fibre to the bottom of the tub in the washing operation, card fly in the card, accumulations of the gills of the gill-boxes, hard ends, snarls that may be made in the process of manufacturing all
240 the way down through into the final operation of spinning and reeling. I am speaking of a worsted mill. I think the same thing would apply to a woolen mill.

Q. Is or isn't the article before you an article known as wool waste in March, 1883?

A. I should say not.

Q. Were the conditions in which wool waste was found in March, 1883, the result of accident or design, so far as you know?

A. It is the natural result of the operation of machinery, the want of care, or possibly some accident that might happen.

Cross-examined.

By Mr. JOHNSON:

Q. You never dealt commercially in waste at all, did you; never bought or sold any?

A. I have sold waste.

Q. That is merely the waste that you manufactured yourself.

A. Yes, sir.

Q. Anything which would have resulted from your operations which you did not use in your business you of course would call waste?

A. Any product that we could not replace back in the business.

Q. And if, therefore, in drawing out your tops you would have broken them off and could not use them in your busi-
241 ness, or did not want to, you would have sold that as waste?

A. No; not necessarily. We would have sold it as spare product. We could never have classed it as waste, believing that waste is an article of inferior value, an article that cannot be returned in process of manufacture and made use *use* of as a primal article—as the same article over again. We should not have called it waste.

Q. You could not have sold it to a third person as anything else but waste?

A. We could have sold it as broken pieces of wool—broken pieces of top slubbing of wool.

Q. That is as close to waste as could be?

A. Well, you may call it waste, but the question is whether it is or not.

(Counsel for the Government offers in evidence samples of wool heretofore produced.)

It is admitted that bale of top produced by the Government is an ordinary commercial top.

Government closes.

(Adjourned until Monday, May 11, 1891, at 11 o'clock a. m.)

242 *Defendants' Evidence.*

GEORGE W. PATTON, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. You are one of the defendants in this case?

A. Yes, sir; of the firm of George W. Patton & Company; our business is merchants, importers, and manufacturers.

Q. How long have you been dealing in waste?

A. Twenty-odd years.

Q. Handled all kinds of it in that time?

A. Every variety.

Q. Had a large experience?

A. Yes, sir.

Q. Please state to the court and jury what is the commercial article of waste, and what it includes as you have known it in the trade or as the trade knows it.

A. Waste in woolen manufacture is made incidentally and accidentally; made in the ordinary course of manufacture; thrown off in the various stages. It is made incidentally. Waste is made accidentally by imperfect manufacture, the resultant manufacture of the wool having been impaired in the process of manufacture, or having been impaired by having been carried for a length of time, or the accidents which usually occur to goods that have been long in stock. That is the result of the accident. Although the material is completed it is almost invariably sold as waste up to the time it is manufactured into cloth.

243 Q. As I understand you, if in the process of making this article (top), you accidently broke off a piece, that would be commercial waste.

A. That would be commercial waste, known as top waste.

Q. Suppose the top is completed and then you purposely break it up, what is the commercial article that results?

A. Waste.

Q. Are there different classes of waste with their distinctive names?

A. Yes, sir.

Q. Mention some of them?

A. Top waste, roving waste, slubbing waste, ring waste, yarn waste, and card waste.

Q. How long have there been divisions of waste?

A. Ever since wool manufacturing existed, I should say.

Q. How long have you been familiar with the article which you call top waste?

A. The first importation of top waste ever made by our firm was I think in 1881 or 1882.

Q. To your knowledge, how long has top waste existed as an article of commerce?

A. Ever since the manufacture of worsted yarn has existed by machinery.

Q. What is the difference between top waste and roving waste?

A. No material difference. Roving waste is still a soft waste like top waste, but one degree advanced in manufacture towards
244 the spinning of worsted yarn. Ring waste is still further advanced, because it is made upon the mule while being spun into yarn. All the other processes prior to that are simply preparatory.

Q. Is there a distinction between soft waste and hard waste?

A. Yes, sir.

Q. What is hard waste?

A. Hard waste is the yarn after it comes from the mule or the spinning frame.

Q. Has there ever been any distinction, either prior or subsequent to 1883, as to the commercial designation in the trade of the article produced with regard to the manufacture by which it was produced, that is to say, whether it was thrown off accidently in the process of manufacture or whether it was broken up intentionally after the thing was produced?

A. No; I do not think there was ever any distinction. I think it was all sold as waste.

By the COURT:

Q. That is, there never was any distinction whether it was produced in the manufacture or whether it was purposely broken up?

A. No, sir; I do not think so.

By Mr. PRICHARD:

Q. Is it an entirely new thing to break up top into waste?

A. Oh, no, sir.

245 Q. How long have you been familiar with that as an article of waste, that is waste which is intentionally produced either here or abroad by breaking up top?

A. Twenty years.

Q. Under what circumstances would top be purposely broken up to make waste?

A. As I have before stated, if the top proved after manufacture that the fibre was too short to spin into a certain number of yarn, or if it had been dyed and the fibre impaired in the process of dyeing, or if it had laid a long time in the man's factory and become moth eaten, or if it had remained a long time in the maker's factory and had become yellow. Those are all conditions which would induce the man to break the top up and sell it for waste just in accordance with the relative price which waste bore to the manufactured article.

By the COURT:

Q. Would these several conditions of top be such as to render it unfit for manufacture into fabric?

A. Yes, sir.

Q. Then it would be broken up?

A. Yes, sir. There is a sample of broken top (defendants' colored sample). This represents a sale of about seventeen hundred pounds. This sample excepting in quality, excepting in the fibre, the quality of the fibre of the material, is in itself more valuable than this (sample A) because it is in larger pieces. This top is of infinitely more value than the sample A. No doubt this was a completed article and it has been destroyed. I do not know
246 for what reason, but I know that the destruction has rendered a difference of thirty or forty cents in its value. It has been bought by me, a portion of it, as waste, and I know has been sold to another consumer also as waste.

Q. Look at the sample of this importation which you have got before you (sample A) and tell me whether that article has a commercial designation and what it is?

A. Waste.

Q. Has it ever had any other commercial designation?

A. None whatever.

Q. When I say commercial designation I do not mean what you call it; I mean what the trade calls it?

A. It is not only commercially waste, but in the man's factory who makes it it is actually waste.

Q. Is there such an article known commercially as scoured wool?

A. Yes, sir.

Q. You are familiar with it?

A. Yes, sir.

Q. What is scoured wool?

A. Scoured wool is wool from the fleece having been put through a cleansing process to clean it of both sand and grease ready for manufacture.

Q. Is that a sample of scoured wool (handing sample to witness)?

A. Yes, sir.

Q. Is the sample of this importation, sample A, scoured wool?

247 A. No, sir.

Q. Can you give us some idea of the prices in this country of scoured wool about the time of this importation?

A. There is no imported scoured wool.

By the COURT:

Q. Scoured wool is not an imported article?

A. It is imported in the grease and it is scoured here.

Q. Then there is no such article as scoured wool imported?

A. That is correct.

By Mr. PRICHARD:

Q. There is no difference, however, in kind between the scoured wool if it was imported scoured on the other side and the same wool imported in the grease and scoured here?

A. No, sir; the result is the same.

Q. Let me have the price of imported, scoured here, in the market about the time of this importation.

A. If my memory serves me right, about eighty cents a pound.

Q. What was the price for waste such as the character of that importation?

A. Sixty-three to sixty-five cents.

Q. Give me the value of this waste.

A. This waste was sold at sixty-three and sixty-five cents. It costs sixty cents landed.

Q. It costs you sixty cents landed and sold for sixty-three or sixty-five cents?

A. Yes, sir.

248 Q. That is landed with a duty?

A. Yes, sir; with the duty added and the charges added.

Q. Did you buy or sell that as waste or scoured wool?

A. I bought it as waste and sold it as such.

Q. Take your memory back prior to 1883 and state whether or not there ever has been a time in the history of the wool trade when the commercial designation of that article that you imported would be scoured wool.

A. No, sir.

Q Could it ever have been bought and sold as scoured wool?

A. No, sir; I may add that prior to 1883 the worsted manufacturing industry in this country was very much smaller than it is now, and practically there was more of this waste in question sold prior to that time in proportion to the amount produced than there is today in this country, because at that time they did not know how to utilize it as well as they do now.

Q. What was the commercial designation of that article which you imported prior to 1883?

A. Waste.

Q. Was there ever a time in the history of the woolen trade when that article would have any other commercial designation?

A. None whatever.

Q. What is the use of that waste; what do you do with it?

249 A. It can be used for various purposes. Largely for the manufacture of woolen yarns and a percentage can be used for adulterating worsted yarn.

Q. Tell me what is the difference between that and a scoured wool that makes this difference in price?

A. The difference between the waste and the scoured wool is first that the fibre of the waste has been destroyed in a measure by having had the noils and short fibre, together with the seeds and vegetable matter combed out, and that had taken out a certain percentage of the felting fibre of the wool, and as wool fibre is worked from time to time, the fibre, no matter how delicately it may be worked, is injured to a greater or less extent. This waste having been once through a process of manufacture cannot successfully go through the same process again as the scoured wool would do originally. The result is that the man, no matter whether he obtains this waste in the open market or by the incidents of manufacture, can only

use a certain percentage of it back again in the original completed article, such as that on the table (top).

Q. How is waste always used?

A. It is always used as an adulterant.

Q. This percentage you speak of is used as an adulterant?

A. Yes, sir; that percentage may vary according to the skill of the manufacturer or the capacity of his machinery.

Q. I presume the amount of percentage depends upon the quality of the waste?

A. Quite.

250 Q. Prior to 1883 were there different prices for top waste, according to the quality and grade, &c.?

A. No; there was no difference in price prior to that time; I don't remember.

Q. Was there difference in price between the various kinds of waste?

A. Yes, sir; I think a man for soft waste, prior to 1883, would give more than he would give for hard waste. There was not any market quotable price for waste at that time, for the reason I have already stated, the manufacture was not large. It was bought upon its merits as presented on the market. One man would present hard waste, another soft, and, according to its adaptability, it would bring a higher or a lower price.

Cross-examination.

By the DISTRICT ATTORNEY:

Q. Where is your place of business?

A. No. 38 North Third street.

Q. What is it?

A. I am a merchant.

Q. Engaged in the sales of various kinds of wool?

A. All wool material; yes, sir.

Q. You are not a manufacturer?

A. Yes, sir.

Q. Where are your works?

A. One at Downingtown, Pennsylvania; one at Bridgton, New Jersey, and another at Clifton Heights, Pennsylvania.

251 Q. What do you make?

A. We make Kentucky jeans, cassimeres, and yarns of various kinds, as well as shoddy.

Q. Do you use the article like the Government samples in your establishment (sample A)?

A. No, sir; we do not; occasionally we do.

Q. Do you manufacture worsted cloths?

A. Sometimes.

Q. As a business?

A. I have given an equivocal answer, because sometimes we make cassimeres and sometimes worsted goods. We do not make worsted yarn.

Q. So far as sample A is concerned, you do not use it in your manufacture?

A. We do at times.

Q. But as a rule?

A. As a rule, no.

Q. So that that particular importation was bought by you for the purpose of sale to others?

A. Yes, sir.

Q. In the firm in which you bought it?

A. Yes, sir.

Q. What was the first importation made by you through Hughes & Isherwood of No. 407?

A. I cannot recollect the exact date.

Q. As near as you can remember.

A. I should say about 1888, I guess. I am not right sure: about that time.

252 Q. About 1888?

A. Yes, sir.

Q. Was the first lot of 407 exactly like sample A?

A. So far as I know, it was.

Q. What did you mean when you wrote to Mr. Isherwood that you wanted 407 to be all broken top?

A. I did not say all broken top. I think I said all top.

Q. He said on page 10 in answer to my question, "Have you received any letters from him," meaning you, "as to the shipment of these broken top rather than the top itself?

A. Yes, sir.

Q. What did he say?

A. He said that he wanted 407 waste all broken top."

A. Yes, sir.

Q. I want to know after you had heard the statement of Mr. Isherwood whether your first importation of this 407 was exactly like sample A.

A. I think it was.

Q. Did you make use of that language in your letter to Mr. Isherwood?

A. I think I did, if Mr. Isherwood says so.

Q. If you did make use of that language, what did you mean by that?

A. I meant I wanted that material free of hard threads.

Q. If your first importation had been exactly like sample A——

A. I catch your question now. I did not catch it. My

253 first importation was not 407. My first importation of this material may have contained, and I think did contain, some hard threads.

Q. When was that?

A. Within a few weeks or within a few months, likely, before the first importation of this sample 407.

Q. Prior to 1888?

A. Yes, sir; prior the reception of this particular sample or lot of stock.

Q. That importation might have contained some hard ends?

A. Yes, sir. I told Mr. Isherwood I wanted all soft waste. I received sample 407, submitted it to my buyers and it was acceptable, and I ordered it.

Q. We understand each other, and that is that your first importation of 407 was not like sample A?

A. No; you misunderstand me. I say my first importation of waste may not have been like 407, and in order to set you straight each sample has a separate number, and of course my prior importation may have been 406 or 405 or 403, so that I simply said that the previous lot contained hard threads and I wanted something free from hard threads.

Q. As matter of fact, the importation of waste that you made prior to the importation of sample A contained various kinds of waste?

A. No; not various kinds. It contained a few hard threads.

Q. What else?

A. That is all.

Q. Did they not contain rovings?

254 A. No; I think not.

Q. Slubbings?

A. I think not.

Q. Nothing but hard ends?

A. That is about all.

Q. What else?

A. That is all, and this material here.

Q. That is to say, that the soft waste like sample A was mixed with hard ends?

A. Yes, sir; a small percentage.

Q. What was the first manipulation to which an importation of that character was subjected?

A. In this country?

Q. Yes; after being imported.

A. The hard threads would be sorted out.

Q. And then what would be done with the other?

A. Used the same as this was, as an adulterant.

Q. What would be the first process to which it would be subjected?

A. Be carded.

Q. Is that the first process to which sample A would be subjected?

A. Yes, sir; the same process as the scoured wool.

Q. What is the first process to which scoured wool is subjected?

A. Carded.

Q. So far as the manipulation is concerned and the first process is concerned, sample A and scoured wool are subjected to identically the same machine?

255 A. When mixed together; yes, sir.

Q. Scoured wool in a condition to manipulate is put on the carding machine, is it not?

A. Yes, sir.

Q. Sample A is put on the carding machine?

A. Yes, sir; the difference between carded wool and sample A is this: that scoured wool is put upon the carding machine alone to manufacture into fabric or fibre and No. 407 or this sample cannot be used alone successfully.

Q. Have you ever used it?

A. Yes, sir.

Q. When?

A. Within four or five years?

Q. Did you not say a moment ago that you only used it occasionally?

A. Yes, sir.

Q. To sell to others?

A. And to manufacture. I think I said I manufactured it occasionally.

Q. In other words, you would take the sample A and put it with your scoured wool on the carding machine; is that it?

A. Yes, sir.

Q. One cost sixty cents and the other cost about eighty cents?

A. Yes, sir.

256 Q. That is assuming that they are of the same character of wool?

A. Yes, sir.

Q. The product of that manipulation is subjected to what?

A. To the combing process.

Q. What became of the hard ends that you had mixed in with the other articles that you imported?

A. I did not sort it. I do not know what the men who bought the waste after I got through with it did with the hard ends. He sorted it, not I.

Q. In answer to Mr. Prichard you stated that the scoured wool that is sold in the domestic market is sold at about eighty cents?

A. That is my recollection.

Q. That is the domestic wool?

A. No; I mean the foreign wool.

Q. Scoured in this country?

A. Australian wool, for example.

Q. Suppose it had been scoured in the other country and brought here in the shape of what is known commercially as scoured wool.

A. I cannot say what it would sell then for, because it would be subjected to scoured wool duty, which is three times the duty to which the unwashed wool would be subjected, and it is not imported scoured because it is more economical to import it the other way.

By the COURT:

Q. Was it ever imported as scoured wool?

257 A. It has, but in very rare occasions. The amount imported is limited. It has been limited to sample purposes.

Q. Has it been commercially imported?

A. The amount is very limited.

Q. I thought you said it had been brought in simply for samples.

A. Samples, and perhaps in other ways there may have been some imported. It is not a common practice.

By the DISTRICT ATTORNEY:

Q. It is not imported in very large quantities, but you certainly do know that at the time of the passage of the tariff act of 1883 scoured wool had been imported into this country?

A. I venture to say that of all the imported wool coming into this country for the last fifteen years that there has not been two per cent. of it imported scoured.

Q. Prior to the passage of the tariff act of 1883 wool had been imported in a scoured condition into this country?

A. I can't answer that, but I think it had. I cannot answer it positively. I have no doubt it had, because of the provision of the law would not have been made if it had not.

Q. Are you able to say of your own knowledge that any of the importations that were made prior to your commencing to deal in No. 407 were the results of accident or design?

A. I am not.

Q. Is it not a fact that so far as you know the importation
258 of sample A or of 407 were the first importations of tops broken up into pieces in that way?

A. No, sir; I am not able to say that, because I believe there were former importations.

Q. I am asking you as to your own knowledge, not your belief. Is it not a fact, so far as you know, that sample A or the importation of No. 407 made by you since 1888 were the first importations of tops deliberately broken up into pieces?

A. No, sir; I do not think so.

Q. I am not asking you what you think. I am asking you as to your own knowledge.

A. To my own knowledge, no, sir. I think that a portion of the importation that was the subject of a trial here three years ago was broken up in that way.

Q. I am now reading from the report of the Secretary of the Treasurer, in which he says: "The main question involved was whether the merchandise, which consisted of broken tops, laps, rovings, slubbings, &c., known as thread waste, carbonated waste, woolen waste, worsted waste, &c., was commercially known as waste." Is it not a fact that the importation in that case was composed of more than one kind of waste?

A. Yes, sir. There were separate importations. There were three or four importations.

Q. Is it not a fact that each importation comprised different kinds of waste?

A. Yes, sir.

Q. So that there has been no importation made by you
259 like sample A?

A. I beg your pardon; one of these very importations was composed of broken tops.

Q. Alone?

A. Yes, sir.

By the COURT:

Q. Did that appear on the trial?

A. Not so far as my testimony. The gist of my testimony on the trial was that it was soft waste and contained no thread, if my memory serves me right.

Q. With the possible exception which you say did exist in the other case, do you personally know of any importation like sample A composed of tops broken into pieces by hand?

A. I cannot say of my own personal knowledge, although I saw many lots of this same material in the market, by whom imported I do not know, before these importations were made.

Q. When?

A. About 1888; prior to the importation of this.

Q. Prior to that time had you seen any?

A. With the exception that I have mentioned in the last trial.

Q. Prior to that had you seen any?

A. No, sir.

Q. So that, in point of fact, the first knowledge that you have of the importation of tops of wool broken into pieces like sample A was about 1887?

A. No; the first importation was 1881 or 1882, as I have told you. I imported it myself.

260 Q. How much then?

A. About three or four thousand pounds.

Q. Did you ever import any after that?

A. No, sir.

Q. It is the only importation that you know of?

A. Yes, sir.

Q. Was that top broken into pieces by hand?

A. I cannot say whether by hand or not. That was broken top.

Q. Was it an accidental or an incidental product?

A. To my own knowledge, I do not know whether this has been broken up by hand. I do not know that the other was broken by hand. I cannot say. It was broken top.

By the COURT:

Q. It was top alone?

A. Yes, sir.

By the DISTRICT ATTORNEY:

Q. That was but the one importation?

A. Yes, sir.

Q. You do not know of any other?

A. To my knowledge, no.

Q. Is it not a fact that in the trial of the case to which you have

just referred that you said in answer to Mr. Valentine that each of the samples then before the court contained hard waste?

A. I think if you will read that testimony further you will find I said some of it was soft waste.

Q. This is the question by Mr. Valentine (143):

261 "Q. And the samples before you are none of the three that you have enumerated (referring to enumerations you had made)?

A. This contains the hard waste.

Q. But it is not the hard waste?

A. It is not, but it contains hard waste. It is in there.

Q. Then it is something else besides the hard ends. There are very few hard ends there, are there not?

A. This contains a very large percentage of hard ends of worsted in every stage of manufacture except the card waste."

Did you not testify to that?

A. Yes, sir. Read the balance of the testimony in fairness to me.

Q. My question was as to what was contained in the sample that you had on trial.

A. I have already testified in the last trial I testified that some of that waste was soft waste. I want you, in justice to me, to find that testimony. Some of the importations were soft waste.

By the COURT:

Q. Were pure soft waste?

A. Yes, sir; it consisted of importations. There were a half a dozen samples, if my memory serves me.

By the DISTRICT ATTORNEY:

Q. Is it or is it not the fact that each of the samples that you had on that trial in that case contained some hard ends?

A. No, sir.

Q. It is not so?

A. No, sir.

262 Q. Did you not so testify on that trial?

A. No, sir; you will find my testimony is that one of those samples or two are of soft waste.

By the COURT:

Q. What does soft waste come from?

A. It comes from the top—the broken top—from the combing in the process of combing. It would also from roving, too.

Q. That would be waste that comes from the combing and what else?

A. It might be slubbing or roving waste, but my memory serves me this was nearly all top.

By Mr. PRICHARD:

Q. Please state why it is, in the instance you have mentioned

where tops have been broken up in the waste, they do not sell it in that shape instead of waste.

A. The principal reason for that is simply a man does not like to proclaim to the world the mistakes he has made. Instead of selling damaged tops that is of no value except for waste he breaks it up into pieces. For example, I met a gentleman night before last who said he had a girl cutting up yarn for some reason.

By the COURT:

Q. That is your understanding, that the reason that he does it is to save exposure?

A. Yes, sir.

Q. And he puts himself to some expense in doing it?

A. Yes, sir; this material was in balls and was broken up.

263 By the DISTRICT ATTORNEY:

Q. Did you say that was in balls?

A. Not at all; not imported. It was in balls and turned out in that condition (defendants' sample).

Q. Domestic product?

A. Yes, sir. The man tore it up and sold it for waste.

By Mr. PRICHARD:

Q. You have been asked whether you made any importation of top waste prior to 1888 like sample A. Prior to 1888, is it not true that under the decisions of the customs officers that was not admitted as waste?

A. That is quite true. You imported contests with the customs officers every importation you made. You had to take the chances of a lawsuit, and for that reason importations were not made, or they were very much retarded.

JAMES DOBSON, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Woolen manufacturer. The name of our firm is John & James Dobson.

Q. How long have you been engaged in the business requiring you to be familiar with wool and wool products?

A. Since 1857.

264 Q. Is your business an extensive one?

A. Yes, sir.

Q. How many hands do you employ?

A. We are not employing quite so many now as we did a little while ago, but we usually employ about forty-six hundred people.

Q. How long have you been familiar with the article known as waste?

A. Since 1857.

Q. Please look at the article before you (Government's sample A) and say what that article is.

A. This is worsted lap waste, lap or top waste.

Q. How long have you been familiar with that article?

A. Since 1866 with this particular article.

Q. What has been its commercial designation during that time?

A. Waste, worsted waste, lap waste, or roving waste, or hard waste, whatever it may be in the different processes of manufacture.

Q. You are familiar with the article known as scoured wool?

A. Yes, sir.

Q. How long have you been familiar with that article?

A. Ever since I have been in the mill.

Q. Is that a sample of it (handing sample to witness)?

A. Yes, sir; that is scoured wool.

Q. Please state whether that sample A is scoured wool.

A. Not commercially known as scoured wool; no, sir.

265 Q. Has there ever been a time when it has been commercially known as scoured wool?

A. Not to my knowledge.

Q. Is there a difference in price between the articles?

A. Yes, sir; scoured wool of the same quality will be worth from ten to fifteen cents per pound more than this will be.

Q. Is there a difference in the use of the article?

A. Yes, sir.

Q. Please state what it is.

A. Scoured wool, you will take that and you will go right through with it and it will make a worsted or make a piece of cloth with it. After it is broken top in this state you cannot work it successfully alone on account of the noils that have been combed out of it; when it has been worked it lays flat and heavy, not springy, and consequently it is never worked to the same degree of fineness the second time it had been worked that it did the first time, and to that extent it loses its value and is used as an adulterant with scoured wool.

Q. As I understand you, the first process of manufacture to which it has been subjected has destroyed some of its properties?

A. Yes, sir.

Q. And it has to be used as an adulterant with the scoured wool?

A. Yes, sir.

Q. What is a top?

266 A. A top is an article that has been produced by the carding and gilling and combing machine. The noils or the short hairy fibre of the wool has been extracted and it leaves long fibre, and that is what is commercially known as a top.

Q. Is that a top (referring to sample of top)?

A. Yes, sir.

Q. You have mentioned that this waste is worth from ten to fifteen cents a pound less than the scoured wool. Can you give us an idea of the difference in the value between waste and top, if there is any?

A. There would be a difference in value between waste and top. I am speaking of the value here.

Q. What would that difference be about?

A. There would be from twenty-five to thirty cents a pound between the value of waste and top of the same quality.

Q. If I took and broke this piece of top up into pieces like that they would be worth from twenty-five to thirty cents less a pound than the top?

A. Commercially; yes, sir.

By the COURT:

Q. Breaking the top up would reduce the value of the wool about twenty-five or thirty cents a pound?

A. Yes, sir.

Q. It would cost probably how much to break it up?

A. If you break it up by hand it would not cost much. If you break it by machinery it would have to be in the process
267 of manufacture.

Q. The breaking up by hand would not be expensive at all?

A. No, sir.

By Mr. PRICHARD:

Q. Is it broken up by boys or girls?

A. Yes, sir. In the combing of tops, if they are not combed perfectly clean, then we have to break them up—that is, if all the noils are not out.

Q. Do you break it up to sell or to use?

A. No, sir; we utilize all our top waste ourselves.

Q. You buy waste?

A. We have bought considerable of it; yes, sir.

Q. If the waste dealer did buy it in the shape of top he would have to break it up to make a raw material out of it?

A. Well, no; not necessarily; if he wanted to sell it for the purpose of making worsted.

Q. I mean a defective top.

A. Yes, sir.

Q. You say you have bought waste; do you buy waste like sample A?

A. Yes, sir. We have bought waste like that sample or similar to it.

Q. What did you buy it as?

A. We bought it as worsted lap waste.

By the COURT: He means he has bought waste like that.

A. Similar to that.

Q. Do you mean to say it was real waste thrown off in the
268 manufacture of fabrics or that it was broken top like this?

A. It was waste similar to that that was offered in this market. We have frequently bought it.

Q. In all respects?

A. In all respects similar to that.

Q. For broken top?

A. Yes, sir; broken top and lap waste; sometimes there would be a little lap waste through it.

Q. Is there any lap waste in that?

A. I do not see any.

Q. In that respect it was not the same?

A. The lap waste and broken top are so similar it would require an expert to detect it. The lap is the waste that goes around in the gilling process, and it will be probably sometimes as long as this and sometimes longer, and it is broken up and thrown amongst this waste.

By Mr. PRICHARD:

Q. Can you tell whether that waste sample A has or has not been intentionally made?

A. That I could not say. There is nothing, in my judgment, to show that it has been intentionally made, because on account when you break it in making the pieces go through the machinery you have got to break it off with a taper, so it will make a joint and not a lump. When the yarn is made, the evener you can make it on the machine the evener your yarn will be when it is finished.

269 Q. Is there any difference in the article, whether it is intentionally or accidentally made?

A. Difference in which way?

Q. In any way.

A. In its appearance?

Q. Commercial designation or appearance, or anything else.

A. No, sir; there is no difference in the commercial designation.

By the COURT:

Q. In the appearance or value?

A. There is none in the appearance or value.

Q. Whether it is made accidentally in the manufacture of fabrics or whether it is made intentionally by breaking up the top?

A. No, sir; there is no difference.

By Mr. PRICHARD:

Q. Has there ever been any difference in the trade between waste that was intentionally or waste that was accidentally made?

A. Not that I know of. I never heard of any.

Cross-examination.

By the DISTRICT ATTORNEY:

Q. Did you ever knowingly buy a bale of broken top—tops broken into pieces?

A. Yes, sir; we have knowingly bought them. We bought them through brokers in this market.

Q. When?

270 A. I think it was in 1888 or the beginning of 1889. I could not say which.

Q. You knew they were simply top broken into pieces?
A. Yes, sir; they were sold to us as broken top.
Q. From whom did you buy them?
A. I believe that is the gentleman over there, but we returned them.
Q. Who do you mean?
A. Daws, I believe, is his name. I am not sure that it is him.

(Mr. Daws requested to stand up.)

Q. You say it was in 1888 or 1889?
A. Yes, sir; we did not accept them because the wool was too short from which they were made. We returned them.
Q. That was in 1888 or 1889?
A. Yes, sir; to the best of my knowledge.
Q. It was an imported article?
A. Yes, sir; I judge it was.
Q. Was that the only case where you had purchased a bale or bales of tops broken into pieces that you knew to be broken top?
A. That was the only one.
Q. This ball, you say, is a ball of top?
A. Yes, sir.
Q. But I understood you to say, in answer to Mr. Prichard, that when that was broken into pieces the resultant was worth about twenty-five or thirty cents less than the ball of top per pound?
271 A. Yes, sir.
Q. Can you tell the jury how it is that this particular importation was sold by the maker, Joseph Knowles, for a higher price broken into pieces than he would have sold it as a bale of top?
A. The conditions in England and here are so different. The value of our raw material is more than double what it is there, and we could not put the same parity of value there on top and waste as we could here.

By the COURT:

Q. But suppose he had imported into this country the top, how then?
A. If it was imported in the top of course it would have been worth more than in the waste, as I said before; from twenty-five to thirty cents a pound more.

By the DISTRICT ATTORNEY:

Q. That is because of the duty?
A. No; it is because of the condition for manufacturing purposes.

By the COURT:

Q. It would then have been in condition ready for manufacturing purposes?
A. Yes, sir. If the tops were made specially it would have been in condition to have gone right through the process of manufacture in the worsted trade.

By the DISTRICT ATTORNEY:

Q. Is that not a fact also as to sample A?

A. No, sir.

272 Q. Do you mean to say that that sample A would not be put right on the card machine?

A. I do.

Q. And put through precisely the same process again as it had been before it reached the form of top?

A. Any pratical manufacturer would take this and take it the same as he would an unwashed piece of wool, and it would be scoured, and it would be carded and combed; after that it would be gilled and go back again on to the combing machines. In every process of this you will get additional noils—you will get from ten to twelve per cent. of noils out of this no matter if it is the second time.

Q. Is it not the fact that the first machine upon which that broken top would be put would be the carding machine?

A. No, sir; not in our mill.

Q. Generally speaking, would it not be? You heard Mr. Patton's testimony?

A. No; I would not say that. I do not know what Mr. Patton testified as to that; but I am speaking for myself.

Q. In your mill?

A. Yes, sir. We should take that top and scour it and put some soap into it to make it a little more slippery than it is here—this feels a little sticky—to get the gum out of it, and there is no wool or top that will work successfully with any gum or anything adhesive that connects the fibres together, and for that reason I would scour it.

By the COURT:

Q. If it was in the top you would avoid the necessity of
273 all that?

A. Yes, sir; because it is in the real continuous length.

By Mr. JOHNSON:

Q. You would scour it because you would think it was the best method of dealing with the article?

A. It is the only proper method.

By the DISTRICT ATTORNEY:

Q. Yet, I understand you, that is a ball of top (top)?

A. Yes, sir.

Q. When I break it into pieces that way (illustrating), then it is waste?

A. Yes, sir.

Q. You at once put that in the same category as you put this (sample B)?

A. Oh, no; that has been through the garneting machine.

Q. Is not that waste?

A. Yes, sir; but that is probably the hard ends that have been broken up.

Q. My question was, the moment I break this top into pieces like that (illustrating), you put it into the same category of waste?

A. Yes, sir.

Q. You also put it in the same category that you would put this (sample C)?

A. Yes, sir; just the same. This is waste from the spinning. I suppose that is the same as this, but is has been garneted—
274 further advanced. The last is thread waste. Thread waste is hard ends. It is garneted usually from hard ends.

Q. That is what you call hard ends?

A. No, sir; this is the hard ends. This is garneted waste, probably made from these hard ends—a special machine that has been made probably ten years for that purpose.

By the COURT:

Q. I understood you to say, in answer to Mr. Prichard, that just such waste as that was imported into this country as far back as 1850.

A. No, sir; I did not say that. I said that I had had the experience since that time.

Q. I understood you to say that you have known just such material as sample A as waste since that time.

A. Yes, sir; that I do; but I did not say it was imported here. It was the commercial designation in every factory, and it was sold on the other side and sold here to a great extent as waste from various processes.

By the DISTRICT ATTORNEY:

Q. How long have you known tops broken into pieces in this way, as has been testified in this suit, to be brought into this country?

A. I do not know how long, for I do not know of any that has been broken up, only what I have heard here today.

By the COURT:

Q. I think you said you did buy, but did not accept one article in 1888?

A. Yes, sir; but I did not know that that had been broken
275 up; I did not know that. I only knew that that was in the shape of broken top, and we bought it as such.

Q. And called it broken top?

A. Yes, sir.

Q. That was the first you knew of it?

A. That is the first we knew of it being exposed for sale here.

Redirect examination.

By Mr. PRICHARD:

Q. How long have you known this article sample A as an article of trade?

A. Since 1866.

Q. Has it or has it not has a commercial designation since that time?

A. As waste, to my knowledge, since 1866.

Q. That is to say, you do not mean that you have known that the article which you knew under that name was intentionally produced, but you have known that article as an article of trade since 1866 however produced?

A. Yes, sir.

By the COURT:

Q. Called broken top?

A. Called broken top.

Q. And consisting altogether purely of top?

A. Yes, sir; but I am speaking of known in the factory as such.

Q. I am speaking of the commercial designation?

276 A. The commercial designation of that article in a worsted mill has always been known as broken top.

By the DISTRICT ATTORNEY:

Q. Do you mean to say that tops broken into pieces packed by themselves have been bought and sold as a commodity for more than three years?

A. Broken intentionally?

Q. Broken intentionally.

A. No, sir; I do not mean to say that.

Q. What you do mean to say is this: That in the subjecting of wool to the various processes in a factory there are pieces of waste that are called top waste. Is not that so?

A. Yes, sir.

Q. And that is all you mean?

A. That is all I mean.

By Mr. PRICHARD:

Q. How long have you known waste consisting of pieces of top packed by themselves sold as a commodity without regard to the method of production?

A. I do not know of any prior to the time of which I speak—we bought from the gentleman that I was speaking of a while ago—1888.

Q. So that prior to that time you do not remember any broken top packed by itself, whether made intentionally or unintentionally?

A. No, sir; not to my knowledge.

Q. I do not mean as to whether you knew how it was
277 broken. What I am asking you is how long you knew broken top as an article of trade consisting of top alone?

A. I could not say anything more than I have already said, 1888.

JOSEPH P. TRUITT, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. I am a manufacturer. I am connected with the firm of Thomas Dolan & Company. I am one of the partners.

Q. Where are their works located?

A. Hancock and Oxford street-, Philadelphia.

Q. Do you do an extensive business?

A. Pretty large business.

Q. How long experience have you had in the handling of products of wool or the wool itself?

A. Since 1866.

Q. Please look at sample A, the Patton importation, and please state what is the commercial designation of that article.

A. Waste.

Q. How long have you been familiar with such an article as that?

A. Ever since I have known anything about worsted yarn.

278 Q. What has been its commercial designation during all that time?

A. The general term is waste, specified by the particular part of the mill in which it was made; that would come under the term top waste or lap waste.

Q. Is waste classified into different kinds?

A. Different kinds; top waste, lap waste, roving waste, ring waste, hard waste, and so on, just according to locality in which it was made.

Q. Varying in value, I suppose, from very cheap to very expensive?

A. Varying in value in accordance with where it could be used, and sometimes in accordance with the demands of the trade.

Q. Are you familiar with the article known in commerce as scoured wool?

A. Yes, sir.

Q. Look at the Patton importation before you (sample A) and say whether that is scoured wool or ever has been known as scoured wool?

A. It was scoured wool. It never was commercially known as scoured wool.

Q. When you say it was scoured wool, you mean it has been made from scoured wool?

A. I say that waste was made out of scoured wool.

Q. Do you see any scoured wool there before you?

A. Yes, sir.

279 Q. What is the difference in the use of this sample A, this Patton importation, and scoured wool? What do you use top waste for?

A. I would use this to mix with scoured wool in the making of the same class of woolen yarn; that would be mixed with wool.

Q. It would be an adulterant?

A. Yes, sir.

Q. Which is the more valuable of the two? Do you know about what the market value of scoured wool and waste are?

A. Yes, sir. The wool out of which this was made would be worth today about eighty cents; seventy-eight to eighty cents, and the waste is worth about sixty to sixty-five cents; that class of waste.

By the DISTRICT ATTORNEY:

Q. Is that the wool or the product of the wool?

A. This I take to be made from Australian scoured wool. The price of Australian scoured wool today is about eighty cents, and the price of that as waste would be about sixty-five cents; somewhere between sixty and sixty-five cents; about fifteen cents difference.

By Mr. PRICHARD:

Q. You have at times had experience in making worsted yarns, have you not?

A. Yes, sir.

Q. This top here is in condition to go on and manufacture worsted yarn, is it not?

A. Yes, sir.

280 Q. Take that Patton importation of top waste. Would you or would you not scour that if you were going to make that into a worsted yarn as the adulterant of scoured wool?

A. I should think I would.

Q. You would first scour it?

A. Yes, sir.

By the COURT:

Q. Is it necessary so to treat it?

A. Not ordinarily. It would be necessary so to treat this because I find it has some grease set in it. In the scouring process the grease has been set. If your honor would handle this you would feel the grease set; anybody can feel that.

By Mr. PRICHARD:

Q. That particular importation you would think necessary to scour if you were going to use it as an adulterant if you were going to make worsted yarn?

A. I should think it would make imperfect yarn if I did not.

By the COURT:

Q. How would that be done with broken top?

A. If the top was clean scoured——

Q. Take an ordinarily perfect top.

A. After a top has once been broken it will not make a perfect worsted thread: the fibres of wool have to be straightened again in some method. I do not think I would go clear back to scouring it. I think it would have to be done by the carder.

Q. It would not have to be scoured?

281 A. Not if it was scored properly in the first place, but this was not properly scored. I think the grease was set in there and that would not let it spindle.

By Mr. PRICHARD:

Q. Can you tell from an examination of that sample whether that has been intentionally broken up from a perfect top or whether it has been broken up because the top was imperfect?

A. I could not answer that. I do not know. I do not think it would be possible to answer. I do not think any one could.

Cross-examination.

By the DISTRICT ATTORNEY:

Q. Have you used tops like this in your mill (ball of top)?

A. Not at present. We are not manufacturing worsted yarn now.

Q. Are you able to say whether if the top is accidentally broken in the process of making the yarn would you put that piece right along with the rest of it or would you throw it into the waste basket in your mill?

A. To a very limited extent. If tops are broken the operator will look at them and see whether the fibre has been broken, and if he finds it has not he can, to a limited extent, incorporate that in the fibre.

Q. That is generally done in most mills, is it not?

A. Yes, sir.

282 Q. They generally try to use their broken top?

A. Yes, sir; they do not sell anything they can help.

Q. I understand you to say, with your experience, you would take that sample A and put it on the card?

A. No, sir; not that sample; that would have to be scoured.

Q. Broken tops generally?

A. Yes, sir; broken tops.

Q. Put it on the carding machine with the scoured wool, would you not?

A. I would have to mix it with the scoured wool to make a satisfactory yarn.

By the COURT:

Q. Does the grease which you speak of refer to the top having been kept for a considerable time?

A. If it was exposed to the cold it might set the grease in that way; but I can't say. In some means the grease has been set in that particular article. I do not think it would make a good yarn, even if it was in the ball, without being scoured over again.

By the DISTRICT ATTORNEY:

Q. What is the price of shoddy a pound?

A. That is a pretty broad term. What kind of shoddy?

Q. The ordinary shoddy that is dealt in.

A. Shoddy will vary from a cent and a half up to fifty or sixty cents a pound. Do you refer to garneted thread waste?

Q. Yes.

283 A. It is worth fifty-five cents, according to quality. It is worth from twenty-five to fifty cents.

Q. What is shoddy waste worth?

A. Shoddy is a term applied to any worsted yarn broken in the garnetter or rag-picker. The highest price is fifty-five cents. The highest is all garneted, all thread waste.

Q. What is mungo?

A. That is a hard-woven woolen; woolen broken up in a rag-picker, used to make the very fine shoddy; used for broadcloth and used for many purposes.

Q. What is it worth a pound?

A. Mungo is worth about nine cents, if free from cotton. It is according to how free it is from cotton. If it has cotton in it, it is worth about six cents a pound. If it is very free from cotton, all wool, it is worth nine cents a pound.

Q. What are flox?

A. They are the result of the shearing process. It is the only kind of waste that cannot be used around a wool mill.

Q. What is that worth a pound?

A. I do not know. You have to pay them to take it away. Sometimes it can be sold if it is absolutely white or black and free from adulteration.

Q. Is shoddy imported into this country to any extent?

A. It has been very largely. I do not know of any at the present time. I think it is stock now.

Q. In your experience, have you ever bought or imported

284 or known a bale of tops broken into pieces to be sold?

A. No, sir.

Q. Never have?

A. No, sir.

Q. Have you ever sold one out of your mill?

A. No, sir; I do not think I have ever sold any top waste. I think I was always able to work that.

Q. I am asking you as to top broken into pieces as this has been.

A. No, sir; I never knew of anything of that kind ever happening.

Q. As I understand it, in the making of woolen yarn it sometimes happens that the top is broken?

A. Yes, sir.

Q. And when it is broken the piece that drops off or is picked up by the mill hand is called a piece of top waste?

A. Yes, sir.

Q. Is not that what you mean when you say that you have known that article for twenty-five years?

A. Yes, sir.

By the COURT:

Q. I understood you to say that taking this sample A, which, as I understand, is conceded all around to embrace nothing but top waste, that you have known just such an article as that by the name of top waste ever since you have known woolen yarn. Do you mean to say you have known an article like that that is free from any other waste than top waste, broken top, ever since you have known woolen yarn?

285 A. Yes, sir. I do not know whether I exactly understand you. Do you mean to say have I known it sold as that?

Q. Have you known it in the market dealt in?

A. No, sir. I have seen it sold only within the last few years.

Q. How many years?

A. I think since about 1887 or 1888; three or four years ago.

Q. That is, not before 1887 or 1888 had you known such an article as sample A, which is broken top purely—not prior to that have you known such an article as waste in the market anywhere?

A. No, sir; not that identical thing.

RUDOLPH C. BINDER, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Manufacturer of worsted yarn, connected with the Tracey Worsted Mills Company.

Q. Do you do a large business?

A. Yes, sir; our mills are at Twenty-fifth and Spruce.

Q. How long experience have you had in the handling of wool or wool fabric?

286 A. Since 1865.

Q. Please look at the sample A before you there and state what that article is. What is its commercial name?

A. It is waste.

Q. How long have you been familiar with waste of these various kinds?

A. Ever since I have been in the business of manufacturing worsted yarn.

Q. How long have you been familiar with such an article as that which you have in your hand?

A. All that time.

Q. What has been its commercial designation during all that time?

A. Waste.

Q. Are you familiar with the article known as scoured wool?
A. Yes, sir.
Q. Is that scoured wool—is that its commercial designation (sample A)?
A. No, sir; that is not scoured wool.
Q. It has been made from scoured wool?
A. Yes, sir.
Q. Have you a sample there of scoured wool?
A. Yes, sir; that is scoured wool (defendants' exhibit).
Q. What is about the relative value of the waste and scoured wool?

287 A. We sell most of our waste. It varies. Sometimes it brings very nearly the price of scoured wool and at other times considerably less, but it is always worth less than scoured wool.

Q. What is the use of that waste? What is it sold for and used for?
A. It is used for mixing with other wool.
Q. Why do you not use it by itself?
A. Because we prefer to use scoured wool. This article has been already considerably worked, and to use it over again would subject it to the same process and would deteriorate its value with use for worsted yarn.
Q. You use it as an adulterant, I understand.
A. Yes, sir; when we do use it.
Q. If you do use it and want to make worsted yarn out of it what is the first thing you would do with it?
A. We would treat it the same as we do our other wool.

By the COURT:

Q. Would you scour it?
A. We would scour it; yes, sir.

By Mr. PRICHARD:

Q. Then you would card it and comb it and gill it?
A. Put it through the same processes as the original fleece.

Cross-examination.

By the DISTRICT ATTORNEY:

Q. Have you ever sold the broken top from your mill?

288 A. Yes, sir; we have.

Q. When?
A. I could not tell you when.
Q. Have you ever broken the balls of top in your mill into pieces and sold them?
A. No, sir.
Q. When did you first see a bale of broken tops as these are—that is to say, a ball of top broken into pieces by hand? When did you first see a bale of material like that?
A. I see very little waste excepting what is made in our mill.

Q. I am speaking of the exact commodity of this importation.
A. This, perhaps, is the first time.
Q. This is the first time you ever saw it?
A. Yes, sir; excepting what I see in our mill. Broken top in our mill is an article made from the regular top.
Q. But that is the accidental result of the process, is it not?
A. Yes, sir. We do not allow anybody to break top.
Q. If a piece of top is broken off of this sliver, so to speak, you generally work it in with the rest of it, do you not?
A. No, sir.
Q. What do you do with it?
A. It then becomes waste.
Q. And you mix it with your other waste, do you not?
A. Yes, sir.
289 Q. And you sell it as such mixed with other kinds of waste?
A. Yes, sir.

By the COURT:

Q. This is the first you ever saw of broken top exclusively?
A. Yes, sir.

By Mr. PRICHARD:

Q. Can you tell from looking at this article (sample A) whether that has been broken intentionally or accidentally?
A. No, sir.
Q. Is there any difference in the resultant article, either in its value or use, whether broken accidentally or intentionally?
A. No, sir.
Q. Look at that and say whether it differs in any way from what you break off in the ordinary processes of manufacture and call top waste.
A. No, sir; this is just the same.

By the COURT:

Q. By appearance?
A. Yes, sir.

By Mr. PRICHARD:

Q. Look at that and tell me what that is (defendants' colored sample).
A. That is also broken top.

By the DISTRICT ATTORNEY:

290 Q. Do you mean to say that that bale of broken top, with no admixture of any other kind of waste, is not worth more than the ordinary waste of your woolen mill?
A. We do not sell——
Q. Answer the question first.
A. I can only answer by——
Q. Can you not answer directly? Do you mean to say that that

bale of broken top, containing nothing but the top broken into pieces, is not worth more than the ordinary waste of your woolen mill, which may contain here and there a piece of broken top?

A. I think the waste that we make in the process of drawing wool—there may be some that is not as large as this in sliver, yet it would be precisely the same thing.

Q. In length?

A. In value.

Q. That is to say, if you had it all baled up by itself like this is; is that it?

A. All through the whole process. This is made in the first stages of the drawing.

Q. The testimony in the case is that it was made simply by breaking the ball of top into pieces. I want to know from you whether you mean to say that that ball of top broken into pieces in that way *it* not worth more than the waste in your woolen mill.

A. Yes, sir; I think at that time.

By the COURT:

Q. Or any other mill?

291 A. Or any other mill.

By Mr. PRICHARD:

Q. Do you keep your drawing waste separate from your other waste?

A. No, sir.

Q. You put it together?

A. Put it together.

By the DISTRICT ATTORNEY:

Q. Most mills do that, do they not?

A. I do not know what other people do. I only know what we do.

By Mr. PRICHARD:

Q. Suppose you keep it separate, would it be the same article as that?

A. The same.

By the COURT:

Q. Is it ever kept separate, or is it customary to sweep it up all together?

A. It is customary in our mill to keep the drawing waste by itself in all stages. This is waste that is made in the early stages of drawing.

By Mr. PRICHARD:

Q. Is it customary in your mill to keep the drawing waste by itself?

A. Yes, sir.

Q. And the drawing waste which you keep by itself is substantially the same as that article?

A. Yes, sir.

292 By the COURT:

Q. Why do you say your waste is not as valuable as this?

A. I mean the whole of our waste. The whole of the waste resulting from the drawing would not be as valuable as if we kept the first separate.

Q. Do you keep the first separate?

A. No, sir; we mix it all together.

By Mr. PRICHARD:

Q. You keep the first process of the drawing?

A. We keep the drawing waste separate.

Q. What is drawing waste?

A. Drawing waste is waste made in the gill boxes, the drawing boxes, and the roving frames. There are no hard ends in it. Some of the slivers may be, perhaps, only one-tenth as large as these in size (sample A).

Q. So that in that case you kept the hard ends separate and kept all the soft waste together?

A. Yes, sir; and naturally the waste would be dirtier than this, and more greasy.

By the DISTRICT ATTORNEY:

Q. The resulting process?

A. Yes, sir.

293 EMILE SCHEPPERS, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?

A. Manufacturer. The firm is Scheppers Bros. We have been in business about thirty years.

Q. How long experience have you had with wool and wool products either here or abroad?

A. About thirty years; twenty years here and ten years abroad.

Q. Look at that sample A and state what that article is. What is its commercial designation?

A. Combed wool waste.

Q. How long have you been familiar with that article?

A. Thirty years.

Q. Has it ever had any other commercial designation?

A. No, sir; not that I know of.

Q. You are familiar with the article known as scoured wool, are you not?

A. Yes, sir.

Q. Is that scoured wool that you have in your hand?

A. No. It is combed wool waste.
Q. What do you mean by "combed wool waste"?
A. Wool that has been combed and of which waste has been made.
Q. Made in what way?
A. In the working.

By the COURT:

294 Q. In the working of the wool?
A. In the working of the combing.
Q. Is it waste made in combing the wool?
A. It is waste made in combing the wool and in gilling.

Cross-examination.

By the DISTRICT ATTORNEY:

Q. This is a ball of top, is it not? (Top.)
A. Yes, sir.
Q. Suppose I take that top and break it in two and three pieces in that way (illustrating). What would you call that?
A. You have made waste of it.
Q. By breaking it into pieces?
A. Yes, sir.
Q. When did you first see or when did you first know of top being broken into pieces by hand and sold as an article of merchandise?
A. I have heard of it. I never saw it. I have heard some years ago that it was done.
Q. When?
A. Four or five years ago; three or four or five years ago.

By the COURT:

Q. You first heard of it then?
A. Yes, sir.

By Mr. PRICHARD:

Q. Do you know what drawing waste is?
295 A. Yes, sir.
Q. What is it?
A. It is waste made in drawing the wool through machinery.
Q. Does it contain any hard ends?
A. No, sir; not in the drawing.

W. H. MCCALLUM, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?
A. Manufacturing worsted and woolen yarns and carpets. I am engaged with McCallum & Sloane.
Q. How long experience have you had in the handling of either wool or wool products?

A. Since 1872.

Q. Look at the sample A before you and state what that article is; what its commercial name is.

A. That is top waste.

Q. How long have you been familiar with top waste?

A. Ever since I started manufacturing in 1872.

Q. Has that article ever had any other commercial designation than waste?

A. I have not known it.

296 Q. There is an article of commerce known as scoured wool?

A. Yes, sir.

Q. Is that scoured wool (sample A)?

A. No, sir.

Q. There is no trouble in determining that, is there?

A. No, sir.

Q. What is drawing waste?

A. Drawing waste is waste that is made in the drawing-room under the gill boxes, the finishing boxes or rovers.

Q. What is the difference between drawing waste and that sample A?

A. It has undergone a further process of manufacture.

Q. That is top and the drawing waste would be any part of the waste thrown off from the time you commenced to comb, I suppose?

A. No; after it left the combs and got into the drawing frames. It is an advanced process.

Q. It would not include the waste thrown off the comb, but would include the waste thrown off the gill boxes?

A. Yes, sir; it is practically the same value.

Q. Is there any difference in value between the drawing waste and that sample there?

A. That I am not prepared to say, because that is a finer grade of material than I handled. If that was the quality of material we use there would be ten or fifteen cents a pound difference.

Q. What would you do with that stuff, if you had that, if

297 you wanted to use it in making worsted yarn?

A. In a fine worsted mill that would be scoured; in a carpet worsted mill it would be put on the cards with scoured wool and put through. Before it was put on the card it would be run through the picker.

Q. And then put on with the scoured wool?

A. Yes, sir; and shaped into a top.

Cross-examination.

By the DISTRICT ATTORNEY:

Q. You say you have known top waste for twenty years?

A. Since 1872.

Q. Have you ever known of broken tops—that is to say, of a top being broken into pieces and baled and sold in that way?

A. No, sir; that is not done in the carpet trade.
Q. You have never heard of that?
A. No, sir; not as far as I know, but I have broken tops in our own factory.
Q. But used them again?
A. Yes, sir.
Q. And that is the usual practice, is it not, of most mills?
A. Yes, sir.

By the COURT:

Q. Why did you break them up?
A. Because they had laid for a long time and the gum had become set and they were not fit to go through the drawing process.

298 Q. Did you ever know top waste in any part of the woolen manufacture?

A. I have seen top waste and waste of this kind has been brought to me.
Q. How far back?
A. Ever since I have been a manufacturer.
Q. I am speaking of broken tops.
A. I could not say exclusively like that.

By Mr. PRICHARD:

Q. Was this top waste that was offered to you all soft waste?
A. All soft waste.
Q. Can you tell about what difference in value would be between that top and all soft waste?
A. Broken tops mixed with soft drawing waste——

By the COURT:

Q. Take the broken top and compare it with the common soft waste that Mr. Prichard speaks of, what would be the difference in value?
A. I do not know just what quality you would call common soft waste.

By Mr. PRICHARD:

Q. I mean the same quality of drawing waste that that would be of top.
A. There would be no difference in value.

By the DISTRICT ATTORNEY:

Q. That is, if it was all one thing?

299 A. If it was all drawing waste and top waste, because there would not be any difference in value then, if it was all top.

By Mr. PRICHARD:

Q. What prices does drawing waste range from? Does it differ in quality and price?

A. Yes, sir; but I am not familiar with that because I have not bought or sold it (sample A).

GUSTAVE DAWS, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?
A. Wool and hair dealer in Philadelphia and in England.
Q. How long have you had an experience in the handling of wool or waste?
A. Since 1876.
Q. Exclusively here or in England?
A. Mostly in England.
Q. And also here?
A. Here since 1888.
Q. Look at the sample before you and tell me what that article is (sample A).
A. Lap waste.
Q. How long have you been familiar with an article like
300 that?
A. Since July, 1887.
Q. How long have you been familiar with lap waste?
A. Since July, 1887.
Q. You have not had any experience in dealing with lap waste prior to 1887?
A. No.

CHARLES J. WEBB, having been duly sworn, was examined as follows:

By Mr. PRICHARD:

Q. What is your business?
A. Dealer in foreign wools and domestic wools.
Q. How long have you been in the business?
A. About thirteen years.
Q. Have you had experience during that time in the handling of wool waste?
A. Yes, sir.
Q. Look at sample A before you and say what it is.
A. I should call it top waste.
Q. How long have you been familiar with that article?
A. Ten or eleven years.
Q. Has it any other commercial designation?
A. No, sir.
301 Q. You are familiar with the article known as scoured wool?
A. Yes, sir.
Q. Is that scoured wool?
A. No, sir.

Q. Have you ever imported an article like that, and, if so, how many years ago?

A. We have never imported anything solid like that.

By the COURT:

Q. What do you mean by solid?

A. I mean to say what we imported had lap waste, slubbing waste, and smaller sliver through it than that.

By Mr. PRICHARD:

Q. What you know as soft waste?

A. Yes, sir; soft waste or lap waste we call it then.

By the COURT:

Q. You never imported anything all tops like this?

A. Not all large pieces like this; not the whole bale, but a large quantity of this stuff through it.

By Mr. PRICHARD:

Q. Can you give us the comparative value between that kind of waste and that top waste?

A. There would be no difference in value, providing it was free from hard ends like these samples are.

Q. What you imported years ago was free from hard ends?

A. What we imported years ago was not quite as clean as that. It had some oil in it.

302 Q. Can you give us about the relative values of the soft waste that you imported and this top waste?

A. I think we paid abroad at that time twenty-one pence for that waste, about forty-two cents. It was some years ago.

Q. How many years ago was that?

A. I think it was in 1880 or 1881.

Q. What would be the difference, if any, in the use of the two things?

A. That I cannot say. I do not think there would be any.

Q. Can you tell from looking at that article whether it has been intentionally or accidentally broken up?

A. No, sir; I could not tell the difference.

Q. Has there ever been any distinction in the trade between waste which has been intentionally and waste which has been accidentally made?

A. I have always bought it by sample shown to us as waste. I do not know of any waste being made on purpose. I only know what I see before me of the sample of the goods.

Q. Take this waste that you imported in 1880 or 1881. Can you give any idea of whether it had much or little of this top waste in?

A. It had a great deal of this top waste in. The colored lots that we had had more than the white, but there was a great deal of top waste to it.

At one p. m. the court took a recess until two o'clock p. m.

303 2 P. M.

By Mr. PRICHARD:

Q. What was the firm that imported that importation of top waste that you spoke of as being imported many years ago?

A. James G. Kitchen & Company. I was with them at that time.

Q. Is there such a thing known as top waste in domestic articles not imported?

A. Yes, sir.

Q. Have you bought and sold top waste by the denomination of domestic waste?

A. We have bought top waste made here in America; yes.

Q. And was that waste by itself or mixed with other kinds of waste?

A. We have bought some of it by itself.

Q. Can you give an idea when?

A. I think it was about four or five years ago.

Q. What was it bought and sold as?

A. We bought and sold it as waste.

Q. Something has been said here in the course of the day about mungo and flocks, and I want some idea of the value of those articles. Can you give me any idea of the range of value of mungo?

A. Yes; a great many different prices for mungo. Mungo is the material made from cloth, and if made from a new cloth it would be probably worth twenty-five or thirty cents, if made from dark-blue cloth, and the same mungo from other cloth about fifteen.

304 Q. How about shoddy?

A. Numerous values; almost as many as wool; from three or four cents a pound up to fifty-five.

Q. What is the range and value of flocks?

A. From a low, goods would be worth about two or three cents, and then from an indigo, goods would be worth about twenty cents, and if you take the flocks that we use for making wall paper they would be worth probably fifty or sixty cents a pound.

Cross-examination.

By the DISTRICT ATTORNEY:

Q. Are the commodities that you have just spoken of the accidental product of the processes of making the merchandise itself?

A. Mungo is made by machinery from the rags.

Q. That is the finished product?

A. The process of making mungo is to take a rag and put it through a shoddy machine or picker, and then you call the product mungo.

Q. These are old rags that it is made of?

A. Some of them are old and some new. I said, if it was new mungo, it would be worth thirty cents a pound.

Q. What do you mean by new?

A. I mean in cutting up cloth, making coats and pantaloons;

they make trimmings of cloth. We call that new tailor clippings or new cloth in the trade.

Q. That is the waste cloth?

305 A. It is the waste made by making the clothes.

Q. And when that is used that is what you call a new rag?

A. When it is made into mungo or made from the rag it becomes mungo after it is picked.

Q. What about flocks?

A. The indigo flocks is made where they make an indigo cloth for policemen or military purposes; is shorn off the face of the goods with a shears, and, being all solid indigo color, it demands a high price.

Q. Because of its color?

A. It is because of its color, and generally because that is fine cloth.

Q. And that is one of the resultants of making the cloth, is it?

A. Yes, sir.

Q. Made by making a face on the cloth?

A. Yes; I understand that is what it is done for.

Q. What is shoddy?

A. Shoddy is waste or rags torn up through a shoddy picker or a card made into shoddy from the fibre or from the rag or the waste.

Q. Made into shoddy?

A. Yes, sir.

Q. What is shoddy when it is made?

A. Shoddy does not exist until you make it from a rag or from a waste.

Q. Have you ever imported or known of the purchase or

306 sale of a bale of broken tops, broken as the sample A is broken, by hand?

A. We have never bought or sold any stock like that as broken top.

By the COURT:

Q. Have you known any like that?

A. A whole bale like this (indicating)?

Q. Yes.

A. No; it has always, the way we handled it, been mixed with a drawing-room waste. The sliver has been smaller, but there is a large quantity of this material with the goods, and if it is sorted out it would be like that.

Re-examined.

By Mr. PRICHARD:

Q. It has generally been mixed with other drawing waste?

A. With drawing waste; yes. What we call the sliver is a little bit smaller; about that small (indicating).

Q. Is there any difference in value between the different kinds of drawing waste?

A. There is no difference in value between the smaller fibre and that, providing they are free of hard ends.

Q. And the drawing waste that you have seen that mixed with is this?

A. Yes, sir.

307 M. H. CHADWICK sworn and examined—

By Mr. PRICHARD:

Q. What is your business?

A. Real-estate broker.

Q. Have you ever had any experience in the examination and handling of wools and wool products?

A. Yes, sir.

Q. What experience have you had?

A. I have been in the custom-house four years, and it was my duty to examine waste in particular.

Q. What years were you at the custom-house?

A. 1881, 1882, 1883, and 1884 and part of 1885.

Q. Look at the sample A before you and state whether you are familiar with an article like that.

A. Yes, sir.

Q. State whether you have handled that in the years you were examining at the custom-house.

A. Yes, sir.

Q. What is that?

A. This is what I call sliver waste.

Q. And were articles like that imported during the years you were at the custom-house?

A. Regularly.

Q. In what shape were they imported—mixed with other goods or separate?

A. Sometimes they were separate, if it was in the same shipment, and sometimes they were mixed together—generally mixed together—rove waste, drawing waste, and sliver waste.

308 Q. Is there any difference in the classification of them, whether mixed with other waste or separate?

A. No.

Q. Is there any difference in the commercial designation of them, whether separate or mixed?

A. No; merely as waste.

Cross-examined.

By the DISTRICT ATTORNEY:

Q. Did you ever see a bale of broken top—that is, tops broken into pieces, solid before?

A. I have seen the solid as large as that brought in (indicating).

Q. You mean the top?

A. Yes, sir; a sliver ball like that.
Q. You have seen that brought in?
A. Yes, sir.
Q. That is, the top?
A. Yes, sir.
Q. That is not my question. Did you ever see a bale of broken tops—that is, tops broken into pieces by hand—come into this port?
A. No; I do not say that I have.
Q. What you have seen is various kinds of waste, is it not?
A. Yes, sir; all conditions.
Q. In various conditions?
A. Yes, sir.
309 Q. Some in which there was a large proportion of what si known as top waste?
A. Yes, sir.
Q. And various other kinds?
A. Yes, sir.

By Mr. PRICHARD:

Q. And some in which there was all top waste?
A. Yes, sir; some of the bags were roving waste from the German ports.

By the DISTRICT ATTORNEY:

Q. What is roving waste?
A. The last stage before it gets to the mule.
Q. That is quite thin?
A. Yes, sir.
Q. Much thinner than this broken top?
A. Oh, yes.
Q. It was that that you have seen together?
A. I have seen it in all conditions.

By Mr. PRICHARD:

Q. Did you ever see whole tops in the waste?
A. Yes, sir; I have seen pieces that size.

By the COURT:

Q. Amongst the waste?
A. Yes, sir; amongst the waste; hard waste and roving and drawing.

310 SEVIL SCOFIELD affirmed and examined—

By Mr. PRICHARD:

Q. What is your business?
A. Manufacturer.
Q. To a large or small extent?
A. We have a good many combs.

Q. How many hands do you employ?

A. About 1,600.

Q. Your mill is at Manayunk, is it?

A. Yes, sir.

Q. How long an experience have you had in the handling of wools or its products?

A. About thirty-two years; thirty-four years.

Q. Look at the sample A before you and say how long you have been familiar with an article like that.

A. This is what we make from our combs; the waste we drop from our different process of combs.

Q. What is the commercial name of that article?

A. The commercial name of that is really waste.

Q. How long has that been its commercial name?

A. We never knew anything different.

Q. You are familiar with the article known as scoured wool?

A. Yes, sir.

Q. Is that what you have in your hand scoured wool?

A. It has to be scoured before it is combed.

Q. Made into scoured wool?

A. Yes, sir.

311 Q. But is that the scoured wool of commerce?

A. They scour the wool, and then after, in its process of combing, you have to put a little oil on again to give it a little greasy feel to make it work good.

Q. What I want to know is would that article be bought and sold as scoured wool?

A. Yes, for some purposes. When they want to put it into goods in the shape it is then they would have to scour it, because a little grease is put on it in its work.

Q. I do not think you quite understand the question. I understand you to say you have to scour it in order to put it in. There is a commercial article known as scoured wool?

A. Yes, sir.

Q. Is that that article that you would buy and sell as scoured wool? If you agreed to sell scoured wool would that be a good delivery?

A. It don't take a dye in that shape.

Q. There is an article known as scoured wool in commerce?

A. Yes, sir.

Q. Is that article the scoured wool of commerce so that if you agreed to sell scoured wool that would be a good delivery?

A. It wouldn't be to us, but with a great many persons it would; but when they would put it into their process again for curling they would have to scour it again; it wouldn't take a dye.

312 Q. I do not want to know whether it can be used for some purposes in place of scoured wool.

A. For some purposes.

Q. What I want to know is what would you call it. Would you call it scoured wool if you would buy and sell it?

A. Yes, sir; if we were buying it in the wool and not the shape that is, then we would buy it as scoured wool.

Q. If you bought it in the wool?

A. Yes; if we bought it in the wool; cleaned in the wool and not worked into this process.

Q. Suppose it is worked in the way you have it now; what would you sell it as?

A. We should have to wash and scour it.

Q. What would you call the article, if you were buying and selling it, that you have in your hand?

A. Waste.

Cross-examined.

By the DISTRICT ATTORNEY:

Q. The waste with which you are familiar, as I understand it, is the top that is broken off in the process of making it into yarn, is it not? For instance, suppose you are making a ball of top and during the manipulation of it in your machinery a piece of the top is broken off; that is what you would call top waste?

A. Yes, sir.

Q. Then what do you do with it?

A. In some cases we take it back again.

313 Q. Put it right along with the sliver, do you not?

A. No, sir; that has to go back to the beginning, where it was washed in the card.

Q. Where do you put it then?

A. I should put it right back in the beginning on the carding machine.

Q. That is what you would do with that, is it not?

A. Yes, sir.

Q. You never bought or sold or know of anybody else buying or selling a bale of broken top broken into pieces by hand in this country, did you?

A. I can't say that I have directly; but I can say this, that we have taken that that way and broke it ourselves to manipulate it to put it into another class of work.

Q. And used it?

A. And used it.

Q. In your own factory?

A. Yes, sir.

Q. But that was not my question. Have you ever bought or sold or known of anybody else buying or selling a bale of broken tops pure and simple?

A. That I do not know; I couldn't say.

Q. When it was broken, did the top that you speak of go into the woolen yarn?

A. As a general rule it goes back into yarn to make into goods; not often.

Q. Into woolen or worsted yarn?

A. Not as a general rule going into worsted yarn. There
314 is a difference between worsted and woolen yarn.

Q. The woolen yarn only going over the carding machine?

A. Yes, sir.

Q. And the worsted yarn going through the combing machines?

A. Yes, sir.

Re-examined.

By Mr. PRICHARD:

Q. You only make it into top when you are making worsted yarn; you do not make it into top when you are making woolen yarn?

A. No, sir.

Q. Look at that article and see if you were going to use them with wool to make worsted yarn whether you would scour it?

A. No, sir; we shouldn't scour that over again; not if it was going into worsted yarn.

Q. Suppose it was going into woolen yarn, would you scour it again?

A. We should if we were going to dye it for fancy work; we should have to take it and wash it.

Q. Although you would not scour again the scoured wool, of course?

A. No, sir.

Q. When you broke up the tops that you say you broke up and used the pieces, was or was not that use precisely the same use
315 to which you would put top waste?

A. Yes, sir.

GEORGE CAMPBELL sworn and examined.

By Mr. PRICHARD:

Q. What is your business?

—. Manufacturer.

Q. Extensive?

A. Fairly.

Q. About how many hands?

A. 1,500 or 1,600.

Q. How long have you been familiar with wool and its products?

A. Thirty years.

Q. Look at that article before you, sample A, and tell me how long you have been familiar with that or articles substantially similar?

A. Over twenty years.

Q. What is its commercial designation?

A. Top waste.

Q. Has it ever has any other commercial designation?

A. I never knew of any other.

Q. You are familiar with the article known as scoured wool?

A. Oh, yes.

316 Q. Is that commercial scoured wool which you hold in your hands?

A. No, sir; this is top waste.

Q. How long have you known top waste composed wholly of pieces of top?

A. Ever since I have been in the business.

Q. Is that true both of domestic and foreign waste?

A. Yes, sir.

Q. Waste is sometimes, then, I presume, sold mixed up together and sometimes separated and classified?

A. Yes, sir; sold both ways.

Q. Tell me what the difference is between that and scoured wool as to its use?

A. Scoured wool is the original pure article. This has been worked once over.

Q. What would you do with that? How is waste of that kind used?

A. We take a small percentage and put it in every blend.

Q. Can you use it by itself to make worsted yarn?

A. The yarn would not be much good.

Q. Have you imported top waste yourself?

A. Yes, sir.

Q. Have you bought top waste of domestic manufacture?

A. No.

Q. (Sample shown witness.) Do you know what that is?

A. That is top waste.

317 Q. (Other samples shown witness.) Look at that and say what it is?

A. That is slub waste; slubbing and roving waste.

Q. How long have you imported top waste?

A. Probably three or four years.

Q. By itself?

A. Yes, sir.

Q. (Indicating.) Is that a sample of top waste made in your own factory?

A. That resembles what we make; it is our drawing-room waste.

Q. That was not intentionally made?

A. Oh no, sir; we are making that every hour in the day.

Q. Is that or not the same in value and use as the sample you have there?

A. Yes, sir; just about.

Cross-examined.

By the DISTRICT ATTORNEY:

Q. Has not the sample of top waste that you have produced in your own mill been subjected to more manipulation than the top you have on the table?

A. Some of it has and some of it has not.

Q. Some of it is twisted, I observe, is it not?

A. Yes, sir; as it goes forward in the drawing it takes a twist.

Q. In other words, that is a sample of your mixed drawing-room waste?

318 A. Not mixed at all.

Q. There are various kinds there?

A. No, sir; all one kind.

Q. Do you mean to say where it is twisted it is exactly the same as that which is not?

A. Exactly the same.

Q. But is there not a twist in it?

A. That don't make any difference; nothing sufficient to make any odds.

Q. (Indicating.) For instance, *it* not that subjected to a twist?

A. Yes; that has gone forward. That is a later part of the process. This is the earlier part (indicating).

Q. Which of these are simply the accidental pieces of broken top or the accidental pieces of top?

A. They are all top.

Q. They are all top, but some of them have been subjected to more manipulation than others, have they not?

A. The only difference is in the process. There are twelve or thirteen machines in process, and some is at earlier machines and some at later.

Q. Then this sample that you have here is a sample from the work of each machine, is it?

A. I presume so from the looks of it. I never saw it before.

Q. As a matter of fact the evidence in this case is that that is simply a ball of top broken into pieces (indicating)?

319 A. That I know nothing about.

Q. This waste that you have produced here is the accidental waste of your mill, is it not?

A. Yes, sir.

Q. Not made into pieces?

A. Just as it runs.

Q. Just as it falls or is taken from the machine?

A. Just as it runs out the girls take it off.

Q. Then what do you do with it?

A. Take it back and mix it into the blends; generally put it through the scouring machine with fresh wool.

Q. In other words, you subject that to the same treatment that you do the wool?

A. Just the same as the greasy wool; yes, sir.

Q. Do you make fine or coarse worsteds?

A. Fine.

Q. Is it not a matter of fact that in the making of coarse worsteds this material could be put right on the carding machine with the scoured wool?

A. It could be done so, but it wouldn't make a good job.

Q. That, I suppose, is a matter of opinion. You say you have been importing top waste for the last three or four years. What is top waste?

A. This kind of stuff.

Q. How is it made?

A. Made as we make this. I presume so. I never saw it made.

320 Q. You assume that from your knowledge of the business?

A. Yes, sir; that is the way I should say it was made.

Q. That top waste is made in the same way that you made this material here (indicating)?

A. Yes, sir.

Q. And that is the accidental result of the process of making yarn?

A. Yes, sir.

Q. (Indicating.) Did you ever import tops broken into pieces, like this, or like that, solid?

A. No; generally in this class.

Re-examined.

By Mr. PRICHARD:

Q. Did you ever break up tops yourself?

A. When we would make a lot of bad work we would break a lot up.

By the COURT:

Q. Bad tops?

A. Yes, sir. When we made a lot of bad work, not clear, with nibs in, we break them up; not fit to comb over again.

Q. Not fit to be used?

A. No. It wouldn't make good work. You have to do that.

By Mr. PRICHARD:

Q. You said you imported top waste. What did you call it in your invoice and what was it passed as?

A. Lap waste.

321 JAMES W. TATTERSFIELD sworn and examined.

By Mr. PRICHARD:

Q. What is your business?

A. Wool dealer.

Q. How long have you had experience in handling wool and waste both in England and America?

A. Nearly twenty years.

Q. Look at sample A before you and tell me what that article is and how long you have been familiar with it.

A. Lap waste.

Q. How long have you been familiar with that article?

A. Nearly twenty years.

Q. What has been its commercial designation during the whole of that time?

A. Lap waste.

Q. Both in England and America?
A. Yes, sir.
Q. There is such an article in commerce as scoured wool, is there not?
A. Yes, sir.
Q. You are familiar with that?
A. Yes, sir.
Q. Is that the article, sample A—is that scoured wool?
A. No, sir.
Q. Have you had any experience, either in England or America, in sorting waste into different kinds?
A. Sometimes; yes, sir.
322 Q. How is waste sold and how has it been sold in the last twenty years?
A. As waste.
Q. Sometimes waste is sold mixed all together—all kinds of waste together—is it not?
A. Yes, sir.
Q. Is it or is it not also sold separated into different kinds?
A. Some people have separated it.

By the COURT:

Q. In commerce is it separated and dealt in separately?
A. Sometimes; yes, sir.

By Mr. PRICHARD:

—. How about the separation between a hard and soft waste?
A. In the — waste some people take the hard ends out as best they can; some places where it all comes mixed; some places there is no hard places in it.
Q. Has there ever been any difference in the commercial designation between waste composed all of top or all of slub and of all rove waste which is mixed all together?
A. No, sir; where the hard end is sold separate they are called thread.
Q. The hard ends are called threads where they are separated out of it?
A. Yes, sir.
Q. But the rest was waste?
A. Yes, sir; always.
Q. And that whether the hard ends were in or out?
323 A. Yes, sir.

Cross-examined.

By the DISTRICT ATTORNEY:

Q. How long have you been in this country?
A. Since 1882.
Q. Since you have been in this country have you ever known of a bale of broken top—I mean a ball of top broken into pieces—having been sold on the market?

A. I have seen bales with whole tops in and partly broken.

Q. That is not my question. I want to know whether you have ever known since you have been in this country a bale of merchandise composed of a ball of top broken into pieces as having been sold on the market.

A. I think I could say yes.

Q. Since when?

A. Since the last three years.

Q. Since 1887?

A. Yes, sir.

Q. But not prior to that time?

A. I was not dealing in it then.

Q. That is when you commenced to deal in it?

A. That is when I commenced to deal in it; yes, sir.

Q. Deal in what?

A. Deal in waste and wool.

Q. I did not ask you about waste and wool. I am asking you about a ball of top being broken into pieces. How long have you been dealing in that?

324 A. I couldn't say exactly.

Q. About. What is your recollection?

A. What we dealt in was the waste.

Q. How long have you been dealing yourself, since your arrival into this country, with the commodity like sample A, bring a ball of top broken into pieces?

A. Not like sample A.

Q. What was yours like?

A. Colored.

Q. But how long have you known of sample A, being top broken into pieces, so testified to by the man who did it, having been dealt in as an article of merchandise in this country?

A. Never knew it.

Re-examined.

By Mr. PRICHARD:

Q. This that you dealt in, as I understand you, was colored?

A. Yes, sir.

Q. Was there any other difference between it except color?

A. No.

Q. What did you buy it as and what was it invoiced as and passed as?

A. We sold it on commission.

Q. And what did you sell it as?

A. As lap waste.

325 Q. Did you bring it through the custom-house?

A. No, sir.

Q. You simply sold it after it was here?

A. No; before it came here.

Q. Do you know how it was entered and passed at the custom-house?

(Objected to.)

Q. Do you know anything about the relative value, practically, of the colored and white lap waste?

A. I should think the colored is about twenty per cent. cheaper.

JOHN J. COLLINS sworn and examined.

By Mr. PRICHARD:

Q. What is your business?

A. Dealer in wool and wool stock.

Q. How long an experience have you had in handling wool and wool waste?

A. About fifteen years.

Q. Look at sample A before you and say how long you have been familiar with that article or an article substantially similar.

A. About eight years.

Q. What is that article? What is its commercial name?

326 A. I would call it waste.

Q. Has it ever had any other commercial designation, to your knowledge?

A. It might be called top waste or lap waste.

Q. You are familiar with an article known as scoured wool?

A. Oh, yes.

Q. Is that which you have just said was waste the commercial article known as scoured wool?

A. No, sir.

Cross-examined.

By the DISTRICT ATTORNEY:

Q. Are you engaged in business for yourself?

A. I am.

Q. How long have you been engaged in business here?

A. About fifteen or eighteen years.

Q. Are you a manufacturer or a dealer?

A. A dealer.

Q. That is, you buy and sell?

A. Buy and sell.

Q. And I understand you to say you have only known the sample for the past eight years?

A. That is as long as I have been acquainted with that class of stock.

Q. What do you call it?

A. Call it waste.

Q. What do you understand waste to be?

327 A. I understand waste to be used as an adulterant.

Q. I ask what you understand it to be.

A. The droppings from machinery.

Q. That is your understanding of it and that is what you say that is?

A. I say that is waste. I don't say that is drop from machinery; no. In my line of business I look on it as waste.

Q. But you understand waste to be the accidental droppings from the machinery that is manufacturing wool?

A. Chiefly, yes.

Q. All together, is it not?

A. Well, not altogether; no; I wouldn't say that.

Q. What is there that is not embraced in that description?

A. It may be caused by the accidents in manufacturing. It may not drop from machinery.

Re-examined.

By Mr. PRICHARD:

Q. Did you ever handle domestic top waste—lap waste—similar to that?

A. I have.

Q. What was that called and known as in the trade?

(Objected to.)

Q. Have you handled domestic top waste consisting wholly of pieces of top?

A. I have, many times.

328 Q. And what was that known in the trade as?

A. Known as broken tops; lap waste some might call it or slubbing waste.

Q. How long has that been known so?

A. I have known it, as I say, for eight years. I think about eight years since I dealt in it first.

By the COURT:

Q. How is it produced?

A. That I cannot say.

Q. Do you know what that which you knew in the domestic market came from?

A. I do not.

Q. You were asked if you knew what was called domestic waste or waste made here. My question was whether you knew how it was made. What did it come from?

A. It came from the worsted machinery is all I know.

By Mr. PRICHARD:

Q. Can you identify the *tip* waste that you deal in? Is that part of it (indicating)?

A. That is the waste.

Q. You say that came from worsted machinery. Do you mean that is the droppings from the machinery?

A. No; I can't say whether it is the dropping from the machinery. I am not at all familiar with worsted machinery.

Q. In other words, can you tell whether that has been thrown off in the course of the making of top or whether it has been made into a completed top and then broken up?

A. That has been a completed top, I believe. I have had
329 the same article in completed tops as completed there.

By the COURT:

Q. What would be the object in tearing that top up?

A. I think it might be that the color wasn't satisfactory. I have also had it in white.

Q. Imperfection?

A. Imperfection, possibly. I have also had it in white.

—— BINDER recalled.

By Mr. PRICHARD:

Q. You were asked in your examination about waste which you made in your drawing-room, and you said that was composed, as I understood you, of different kinds of drawing waste. I want to ask you whether there was any difference in value or use between that drawing waste which was composed of different kinds and that sample A there.

A. No; not as long as it is all soft waste.

(Cross-examination waived.)

Defendant- rests.

It is understood that all the articles referred — during the process of the trial shall be considered in evidence.

Closed.

330 TUESDAY, *May* 12, 1891.

It is agreed that if the jury finds for the plaintiff it shall so find specially and separately whether the tops which were broken into fragments constituting this importation were so broken for the purpose of changing the condition of the wool from tops into the fragments resembling waste for the purpose of evading the duty to which the wool in the form of tops would be subjected on importation to this country or evading duty to which the importer believed the tops would be liable.

Charge of the Court.

BUTLER, *J.*:

GENTLEMEN OF THE JURY: It is very unsatisfactory that the court, at the close of a trial such as this, should be called upon to submit the case to the jury, involving, as it does, important questions of law and constructions of statute, without greater opportunity for examination and study than is afforded. I must, however, submit the case to you upon the impressions which have been made on my mind while listening to the testimony and to the addresses of counsel.

The importation in question was brought to this country by the defendants and entered at the custom-house as "wool waste." On

examination by the proper custom officers it was classified as "wool scoured," which is liable to a duty of thirty cents per pound, and was assessed at double that sum, to wit, sixty cents per pound,
331 under the following provisions of section 356 of the tariff act of 1883.

"The duty upon wool which shall be imported in any other than ordinary condition as now and heretofore practiced or which shall be changed in its character or condition for the purpose of evading the duty shall be twice the amount to which it would otherwise be subject."

In other words, these officers of the Government decided that the importation was "wool scoured," brought here in other than the ordinary condition in which it was the practice to import such wool at the date of the statute, March, 1883, and previously, and also found that its condition had been changed to evade the payment of the duty. The defendants having paid the amount to which the wool was liable as "waste only," the Government sued and is now seeking to recover the balance due according to the decision and assessment stated. The only question for consideration is, Was the assessment right? The decision of the customs officers must be regarded as right and allowed to stand until shown to be wrong. The burden of showing this is on the defendants. They must prove it to be wrong or pay what is now demanded.

The defendants assert, first, that the article is "wool waste."

Secondly, that if it is not it is a "manufacture of wool;" and, thirdly, that if it is neither of these articles it is not "wool scoured." If either of these assertions is proved the defence is made out and the Government cannot recover.

Does the evidence prove it to be "wool waste" within
332 & 333 the meaning of this term as employed in the statute?

(The interpretation of the statute is for the court, and I instruct you that the term "wool waste," as there employed, signifies such parts or particles of the wool as are thrown off in the several processes of its manufacture into wool and worsted fabrics. According to the testimony on both sides, such alone was known as "wool waste" at the date of the statute and prior thereto. The importation in question, though called "wool waste," seems to be so called only because of its resemblance to what was formerly known by this designation. It does not consist of refuse or broken particles thrown off in the process of manufacture, as before described, but is made intentionally by tearing up what are called "wool tops," which consist, as you have seen, of wool which has been put through several processes and prepared for spinning.

The term "waste," as the statute employs it, does not embrace this commodity.)

(Is it a "manufacture of wool" such as the term "manufacture" used in the statute contemplates? In the judgment of the court it is not. Without undertaking to define particularly what this term does embrace, it is sufficient to say that it does not include these torn fragments of "wool tops." It may be questioned possibly whether "tops" themselves are embraced; whether the term in-

cludes anything short of a fabric virtually completed for use, but granted that it embraces "tops" it does not embrace their fragments when destroyed. Such fragments cannot therefore be said to constitute a "manufacture" within the meaning of the language
334 as employed in the statute. It would be useless to enlarge on the subject.)

(We come now to the third of defendants' allegations: that the article is not "scoured wool." It seems clear, from the testimony, that it is not what is commercially so designated; but the language of the statute which refers to wool imported scoured in some other than the ordinary condition in which such wools are commonly imported does not and is not intended to describe what is commercially designated "scoured wool." The change worked upon it to produce the new condition at once distinguishes it. It is no longer in the condition to which the term, commercially used, applies. If it came in the condition of what is commercially known as scoured wool it necessarily would not fall within the provision imposing a double duty. Congress contemplated that such wool might be changed by additional work or manipulation and thus brought here in other than the ordinary condition in which it was customarily brought, and therefore imposed the penalty of a double duty where this is done. If, therefore, this wool was imported scoured and in a condition other than that in which such wool was customarily imported in March, 1883, and previously, it fell within the provision referred to and the duty assessed is right.)

(It would follow, gentlemen, from what the court has said to you, while I do not take the case from you because it is submitted upon the evidence, that the plaintiff is entitled to recover the amount of the claim.)

335 It is agreed that if the jury finds for the plaintiff it shall so find specially and separately whether the tops which were broken into fragments constituting this importation were so broken for the purpose of changing the condition of the wool from tops into the fragments resembling waste for the purpose of evading the duty to which the wool in the form of tops would be subjected on importation to this country or evading duty to which the importer believed the tops would be liable.

Thus you are in addition to pass separately upon the question thus submitted. It is in writing, will be sent out, and you will know how to answer it.

(The decision of the customs officers not only determined *prima facie* that the wool imported was in other than the condition in which such wool was imported in 1883 and before, but also that it was changed from one condition to another for the purpose of avoiding duty.) This latter, you will observe, is a different question from the one considered in the remarks made to you a few moments ago. As respects this it is unimportant whether the wool is brought here in a condition other than that in which it was before imported. It may have come habitually in the same condition before, and yet if it has been intentionally changed from another condition to this for the purpose of evading duty—that is, to get it in free of

duty or at a reduced rate—the importation falls within the provision of the statute imposing a double duty. (Here the wool was changed from the condition of "wool tops" to that in which you see it, resembling waste. If the object of so changing its condition was
336 to avoid the payment of duty such as would be levied on tops or as the importer supposed would be levied on tops, the assessment made by the customs officers was right.) What was the object of changing the condition of this wool from tops to the fragments in which you see it? Why were the tops torn up after having been made? You have heard the evidence. You have heard the British witnesses who were examined and who tell you of the custom that has arisen there of tearing up tops within a few years for importation to this country. You will judge what the object is. You must determine whether it is to avoid the duty to which it was believed the tops would be subjected, whether it is to get this wool in as "waste" at a lower rate of duty. There is no suggestion that the tops torn up to make this importation were imperfect or damaged. Witnesses have testified that when such tops are torn up it is with a view to transportation here. They have also testified that the tops are worth more in this country in the sound condition in which you see the top before you than in the fragments after being torn up.

It is for you to say what the object of tearing these tops up was. If you find they were torn for the purpose of avoiding duty you will say so in answering the question put by the agreement. If you find that they were not torn up dishonestly, that they were not torn up with a view to evading duty, you will then say so.

I disaffirm the first point presented by the defendant. I cannot affirm any of the points in terms, and I think they are sufficiently answered in what is said in the general charge.

337 *Defendants' Points.*

1. The evidence of both plaintiff's and defendants' witnesses being that the article imported was not scoured wool, it was not liable to duty as such, and your verdict should be for defendant.

2. There being no evidence that the article imported was scoured wool put into extraordinary condition for importation, but, on the contrary, the evidence on both sides being that the article imported was an article known as waste or broken top, manufactured by breaking up another article of commerce known as wool top, which had been manufactured for general purposes by a series of processes from wool, your verdict should be for defendant.

3. The words "woolen rags, shoddy, mungo, waste, and flocks," used in the tariff act, are to be interpreted in their commercial sense, and whether the destruction of the wool tops was accidental or intentional, if the resultant product was commercially known as waste, it was dutiable as such.

4. Even if the imported article was not produced before the tariff act of 1883 was passed, yet if when produced it was, according to the commercial understanding, included in the commercial designation of waste, it was dutiable as such.

5. If the imported article was intentionally manufactured from wool, then, even though that fact took it out of the legal
338 definition of the word "waste" as used in the tariff act, it would be dutiable only as a "manufacture of wool," and your verdict must therefore be for defendant."

Defendants excepted to the following portion of the charge:

"The interpretation of the statute is for the court, and I instruct you that the term 'wool waste,' as there employed, signifies such parts or particles of the wool as are thrown off in the several processes of its manufacture into wool and worsted fabrics. According to the testimony on both sides, such alone was known as 'wool waste' at the date of the statute and prior thereto. The importation in question, though called 'wool waste,' seems to be so called only because of its resemblance to what was formerly known by this designation. It does not consist of refuse or broken particles thrown off in the process of manufacture, as before described, but is made intentionally by tearing up what are called 'wool tops,' which consist, as you have seen, of wool which has been put through several processes and prepared for spinning.

"The term 'waste,' as the statute employs it, does not embrace this commodity."

Defendants also excepted to the following portion of the charge:

"Is it a 'manufacture of wool' such as the term 'manufacture' used in the statute contemplates? In the judgment of the court it is not. Without undertaking to define particularly what this term does embrace, it is sufficient to say that it does not include
339 those torn fragments of 'wool tops.' It may be questioned, possibly, whether 'tops' themselves are embraced; whether the term includes anything short of a fabric virtually completed for use; but granted that it embraces 'tops,' it does not embrace their fragments when destroyed. Such fragments cannot therefore be said to constitute a 'manufacture' within the meaning of the language as employed in the statute. It would be useless to enlarge on the subject."

Defendants also excepted to the following portion of the charge:

"We come now to the third of defendants' allegations—that the article is not 'scoured wool.' It seems clear from the testimony that it is not what is commercially so designated; but the language of the statute which refers to wool imported scoured in some other than the ordinary condition in which such wools are commonly imported does not and is not intended to describe what is commercially designated 'scoured wool.' The change worked upon it to produce the new condition at once distinguishes it. It is no longer in the condition to which the term, commercially used, applies. It came in the condition of what is commercially known as scoured wool; it necessarily would not fall within the provision imposing a double duty. Congress contemplated that such wool might be changed by additional work or manipulation and thus brought here in other than the ordinary condition in which it was customarily brought, and therefore imposed the penalty of a
340 double duty where this is done. If, therefore, this wool was

imported scoured and in a condition other than that in which such wool was customarily imported in March, 1883, and previously, it fell within the provision referred to, and the duty assessed is right."

Defendants also excepted to the following portion of the charge:

"It would follow, gentlemen, from what the court has said to you—while I do not take the case from you, because it is submitted upon the evidence—that the plaintiff is entitled to recover the amount of the claim."

Defendants also excepted to the following portion of the charge:

"The decision of the customs officers not only determined *prima facie* that the wool imported was in other than the condition in which such wool was imported in 1883 and before, but also that it was changed from one condition to another for the purpose of avoiding duty."

Defendants also excepted to the following portions of the charge:

"Here the wool was changed from the condition of 'wool tops' to that in which you see it, resembling waste. If the object of so changing it- condition was to avoid the payment of duty such as would be levied on tops or as the importer supposed would be levied on tops the assessment made by the customs officers was right."

341 Defendants also excepted to the answer of the court to the defendants' points as follows:

"I disaffirm the first point presented by the defendants I cannot affirm any of the points in terms and I think they are sufficiently answered in what is said in the general charge."

342 And thereupon the counsel for the said defendants did then and there except to the aforesaid charge and opinion of the said court, and inasmuch as the said charge and opinion so excepted to do not appear upon the record—

The said counsel for the said defendants did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided; and thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 22d day of May, 1891.

WM. BUTLER, *J.* [L. S.]

343 U. S. District Court, Eastern District of Penna.

THE UNITED STATES OF AMERICA
vs.
GEORGE W. PATTON, CHARLES J. BIGLEY, and Mason M. Culver, Copartners Trading as George W. Patton and Company.

No. 3. May Sessions, 1889.

Assignments of Error.

(1.) The learned judge erred in instructing the jury as follows:

"The interpretation of the statute is for the court, and I instruct you that the term 'wool waste,' as there employed, signifies such parts or particles of the wool as are thrown off in the several processes of its manufacture into wool and worsted fabrics. According to the testimony on both sides, such alone was known as 'wool waste' at the date of the statute and prior thereto. The importation in question, though called 'wool waste,' seems to be so called only because of its resemblance to what was formerly known by this designation. It does not consist of refuse or broken particles thrown off in the process of manufacture, as before described, but is made intentionally, by tearing up what are called 'wool tops,' which consist, as you have seen, of wool which has been put through several processes and prepared for spinning. The term 'waste' as the statute employs it does not embrace this commodity."

(2.) The learned judge erred in instructing the jury as follows:

344 "Is it a 'manufacture of wool' such as the term 'manufacture' used in the statute contemplates? In the judgment of the court it is not. Without undertaking to define particularly what this term does embrace it is sufficient to say that it does not include these torn fragments of 'wool tops.' It may be questioned, possibly, whether 'tops' themselves are embraced, whether the term embraces anything short of a fabric virtually completed for use; but, granted that it embraces 'tops,' it does not embrace their fragments when destroyed. Such fragments cannot therefore be said to constitute a 'manufacture' within the meaning of the language as employed in the statute. It would be useless to enlarge on the subject."

(3.) The learned judge erred in instructing the jury as follows:

"We come now to the third of defendants' allegations—that the article is not 'scoured wool.' It seems clear from the testimony that it is not what is commercially so designated; but the language of the statute which refers to wool imported scoured in some other than the ordinary condition in which such wools are commonly imported does not and is not intended to describe what is commercially designated 'scoured wool.' The change worked upon it to produce the new condition at once distinguishes it. It is no longer in the condition to which the term, commercially used, applies. If it came in the condition of what is commercially known as scoured wool it necessarily would not fall within the *the* provision

345 imposing a double duty. Congress contemplated that such

wool might be changed by additional work or manipulation and thus brought here in other than the ordinary condition in which it is customarily brought, and therefore imposed the penalty of a double duty where this is done. If, therefore, this wool was imported scoured and in a condition other than that in which such wool was customarily imported in March, 1883, and previously, it fell within the provision referred to and the duty assessed is right."

(4.) The learned judge erred in instructing the jury as follows:

"It would follow, gentlemen, from what the court has said to you, while I do not take the case from you because it is submitted upon the evidence, that the plaintiff is entitled to recover the amount of the claim."

(5.) The learned judge erred in instructing the jury as follows:

"The decision of the customs officers not only determined *prima facie* that the wool imported was in other than the condition in which such wool was imported in 1883 and before, but also that it was changed from one condition to another for the purpose of avoiding duty."

(6.) The learned judge erred in instructing the jury as follows:

"Here the wool was changed from 'the condition of 'wool tops' to that in which you see it, resembling waste. If the object of so changing its condition was to avoid the payment of duty
346 such as would be levied on tops, the assessment made by the customs officers was right."

(7.) The learned judge erred in disaffirming defendants' first point, which was as follows:

"1. The evidence of both plaintiff's and defendants' witnesses being that the article imported was not scoured wool, it was not liable to duty as such, and your verdict should be for defendant-."

(8.) The learned judge erred in disaffirming defendants' second point, which was as follows:

"2. There being no evidence that the article imported was scoured wool put into extraordinary condition for importation, but, on the contrary, the evidence on both sides being that the article imported was an article known as waste or broken top, manufactured by breaking up another article of commerce known as wool top, which had been manufactured for general purposes by a series of processes from wool, your verdict should be for defendant-."

(9.) The learned judge erred in disaffirming defendants' third point, which was as follows:

"3. The words 'woolen rags, shoddy, mungo, waste, and flocks,' used in the tariff act, are to be interpreted in their commercial sense, and whether the destruction of the wool tops was accidental or intentional, if the resultant product was commercially known as waste, it was dutiable as such."

(10.) The learned judge erred in disaffirming defendants' fourth point, which was as follows:

"4. Even if the imported article was not produced before
347 the tariff act of 1883 was passed, yet if, when produced, it was, according to the commercial understanding, included in the commercial designation of waste, it was dutiable as such."

(11.) The learned judge erred in disaffirming defendants' fifth point, which was as follows:

"5. If the imported article was intentionally manufactured from wool, then even though that fact took it out of the legal definition of the word 'waste' as used in the tariff act, it would be dutiable only as a 'manufacture of wool,' and your verdict must therefore be for defendant-."

And the said defendants (plaintiffs in error) therefore pray that the judgment of the said district court may be reversed.

JOHN G. JOHNSON,
Per J. W. B.,
Attorney for Defendants, Plaintiffs in Error.

And afterwards, to wit, on the 22nd day of June, A. D. 1891, a bond of the said defendants, with surety, in the sum of sixteen thousand dollars being filed is in the words and figures following, to wit:

348 In the District Court of the United States in and for the Eastern District of Pennsylvania.

Know all men by these presents that we, George W. Patton, Charles J. Bigley, and Mason M. Culver, of the city and county of Philadelphia, in the State of Pennsylvania, and George Campbell, Thomas Dolan, William H. Arrott, and Charles A. Furbush, of the city of Philadelphia and State of Pennsylvania, are jointly and severally held and firmly bound unto the United States in the sum of sixteen thousand dollars, lawful money of the United States of North America, to be paid to the said United States; to which payment, well and truly to be made, we do bind and oblige ourselves and each of us, our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this twenty-second day of June, 1891.

Whereas the above-mentioned George W. Patton, Charles J. Bigley, and Mason M. Culver have prosecuted a writ of error to the circuit court of the United States in and for the eastern district of Pennsylvania to reverse a judgment rendered against them by the district court of the United States for the district aforesaid in action of assumpsit at the suit of the United States of May sessions, 1889, No. 3:

349 Now, the condition of this obligation is such that if the above-named George W. Patton, Charles J. Bigley, and Mason M. Culver shall prosecute their said writ of error to effect and answer the amount recovered against them in said district court and all costs and damages which may be adjudged against them if they shall fail to make good their plea, then this obligation to be void; or else to remain in full force and virtue.

Taken and acknowledged before me this twenty-second day of June, 1891.

CHARLES S. LINCOLN,
Clerk U. S. D. C.

G. W. PATTON. [SEAL.]
CHAS. J. BIGLEY. [SEAL.]
MASON M. CULVER. [SEAL.]
GEORGE CAMPBELL. [SEAL.]
THOMAS DOLAN. [SEAL.]
W. H. ARROTT. [SEAL.]
CHARLES A. FURBUSH. [SEAL.]

June 23, '91.
Sureties approved (by assent of plaintiff's counsel).
WM. BUTLER, *J.*

350 UNITED STATES OF AMERICA, } ss:
Eastern District of Pennsylvania, }

I, Charles S. Lincoln, clerk of the district court of the United States for the eastern district of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said court in a certain action of assumpsit therein lately depending, wherein the United States of America is the plaintiff and George W. Patton, Charles J. Bigley, and Mason M. Culver, trading as George W. Patton and Company, are the defendants, as full and entire as the same now remains of record in said court.

In testimony whereof I have hereunto subscribed my hand and affixed the seal of the said district court this 23rd day of [SEAL.] June, A. D. 1891, and in the 115th year of the Independence of the said United States.

CHARLES S. LINCOLN,
Clerk District Court.

351 And afterwards, to wit, on the 24th day of June, A. D. 1891, John G. Johnson, Esq., attorney for plaintiffs in error, and John A. Read, Esq., attorney for defendant in error, come into court here and files a stipulation as to hearing of cause, which, being read, is in the words and figures following, to wit:

352 U. S. Circuit Court, Eastern District, Oct. Sess., 1891.

GEORGE W. PATTON, CHARLES J. BEGLEY, and MASON M. CULVER, Copartners, Trading as George W. Patton & Company, Plaintiffs in Error,
vs.
UNITED STATES OF AMERICA, Defendant in Error. } No. 1.

And now this 24th day of June, A. D. 1891, it is hereby stipulated and agreed between John G. Johnson, Esquire, attorney for plaintiffs in error, and John R. Read, Esquire, attorney for the United

States of America, defendant in error, that the above-entitled cause shall now be heard and decided with the same force and effect as if the writ of error herein had been returnable on the first Monday in April, A. D. 1891.

JOHN G. JOHNSON,
Att'y for Plaintiffs in Error.
JOHN R. READ,
Att'y for Defendant in Error.

353 And afterwards, to wit, on the 24th day of June, A. D. 1891, argument on writ of error to the district court of the United States coming on to be heard, and after argument by counsel for the respective parties, and, the court, being fully advised in the premises, enters the following order, to wit:

354 U. S. Circuit Court, Eastern District of Pennsylvania.

GEORGE W. PATTON, CHARLES J. BEGLEY, and Mason M. Culver, Copartners, Trading as George W. Patton and Company, Plaintiffs in Error, *vs.* THE UNITED STATES OF AMERICA, Defendant in Error.	Oct. Sess., 1891. No. 1.

And now, to wit, this twenty-fourth day of June, A. D. 1891, the above cause coming on to be heard upon consideration, it is ordered and adjudged that the judgment of the district court of the United States for the eastern district of Pennsylvania to No. 3 of May sessions, A. D. 1891, wherein the above-named defendant in error was plaintiff and the above-named plaintiffs in error were defendants, be, and the same is hereby, affirmed with costs and judgment entered for the defendant in error and against the plaintiffs in error in the sum of ten thousand nine hundred and forty-one $\frac{70}{100}$ dollars ($10,941.70), with interest from June 12th, A. D. 1891.

Whereupon judgment is entered accordingly.

355 In the Circuit Court of the United States for the Eastern District of Pennsylvania.

GEORGE W. PATTON, Trading, &c., *vs.* U. S. OF AMERICA.	No. 1. Oct. Sess., 1891.

Surwrit of error from Supreme Court United States.

And now, this 24th day of June, 1891, the court fix the amount of security to be entered by the plaintiff- in error in above in the sum of $16,000.00.

356 U. S. Circuit Court, Eastern District of Penna., October Sessions, 1891.

GEORGE W. PATTON, CHARLES J. BIGLEY, and MASON M. CULVER, Copartners, Trading as George W. Patton and Company, Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA, Defendants in Error. } No. 1.

Assignments of Error.

I. The learned circuit judge erred in refusing to sustain plaintiffs' first assignment of error, which was a follows:

(1.) The learned judge erred in instructing the jury as follows:

"The interpretation of the statute is for the court, and I instruct you that the term 'wool waste,' as there employed, signifies such parts or particles of the wool as are thrown off in the several processes of its manufacture into wool and worsted fabrics. According to the testimony on both sides such alone was known as 'wool waste' at the date of the statute and prior thereto. The importation in question though called 'wool waste,' seems to be so called only because of its resemblance to what was formerly known by this designation. It does not consist of refuse or broken particles thrown off in the process of manufacture, as before described, but is made intentionally by tearing up what are called 'wool
357 tops,' which consist, as you have seen, of wool which has been put through several processes and prepared for spinning. The term 'waste' as the statute employs it does not embrace this commodity."

II. The learned circuit judge erred in refusing to sustain plaintiffs' second assignment of error, which was as follows:

(2.) The learned judge erred in instructing the jury as follows:

"Is it a 'manufacture of wool,' such as the term 'manufacture' used in the statute contemplates? In the judgment of the court it is not. Without undertaking to define particularly what this term does embrace it is sufficient to say that it does not include these torn fragments of 'wool tops.' It may be questioned, possibly, whether 'tops' themselves are embraced; whether the term embraces anything short of a fabric virtually completed for use; but granted that it embraces 'tops' it does not embrace their fragments when destroyed. Such fragments cannot therefore be said to constitute a 'manufacture' within the meaning of the language as employed in the statute. It would be useless to enlarge on the subject."

III. The learned circuit judge erred in refusing to sustain plaintiffs' third assignment of errors, which was as follows:

(3.) The learned judge erred in instructing the jury as
358 follows:

"We come now to the third of defendants' allegations; that the article is not 'scoured wool.' It seems clear from the testimony that it is not what is commercially so designated; but the language of the statute, which refers to wool imported, scoured, in

some other than the ordinary condition in which such wools are commonly imported, does not, and is not intended to, describe what is commercially designated 'scoured wool.' The change worked upon it to produce the new condition at once distinguishes it. It is no longer in the condition to which the term, commercially used, applies. If it came in the condition of what is commercially known as scoured wool it necessarily would not fall within the provision imposing a double duty. Congress contemplated that such wool might be exchanged by additional work or manipulation, and thus brought here in other than the ordinary condition in which it is customarily brought, and therefore imposed the penalty of a double duty where this is done. If, therefore, this wool was imported scoured and in a condition other than that in which such wool was customarily imported in March, 1883, and previously, it fell within the provisions referred to, and the duty assessed is right."

IV. The learned circuit judge erred in refusing to sustain plaintiffs' fourth assignment of error, which was as follows:

(4.) The learned judge erred in instructing the jury as follows:

"It would follow, gentlemen, from what the court has said
359 to you, while I do not take the case from you because it is submitted upon the evidence, that the plaintiff is entitled to recover the amount of the claim."

V. The learned circuit judge erred in refusing to sustain plaintiffs' fifth assignment of error, which was as follows:

(5.) The learned judge erred in instructing the jury as follows:

"The decision of the customs officers not only determined *prima facie* that the wool imported was in other than the condition in which such wool was imported in 1883 and before, but also that it was changed from one condition to another for the purpose of avoiding duty."

VI. The learned circuit judge erred in refusing to sustain plaintiffs' sixth assignment of error, which was as follows:

(6.) The learned judge erred in instructing the jury as follows:

"Here the wool was changed from the condition of 'wool tops' to that in which you see it, resembling waste. If the object of so changing its condition was to avoid the payment of duty such as would be levied on tops the assessments made by the customs officers was right."

VII. The learned circuit judge erred in refusing to sustain plaintiffs' seventh assignment of error, which was as follows:

(7.) The learned judge erred in disaffirming defendants'
360 first point, which was as follows:

"1. The evidence of both plaintiff's and defendants' witnesses being that the article imported was not scoured wool, it was not liable to duty as such, and your verdict should be for defendant-."

VIII. The learned circuit judge erred in refusing to sustain plaintiffs' eighth assignment of error, which was as follows:

(8.) The learned judge erred in disaffirming defendants' second point, which was as follows:

"2. There being no evidence that the article imported was scoured

wool put into extraordinary condition for importation, but, on the contrary, the evidence on both sides being that the article imported was an article known as waste or broken top, manufactured by breaking up another article of commerce known as wool top, which had been manufactured for general purposes by a series of processes from wool, your verdict should be for defendant-."

IX. The learned circuit judge erred in refusing to sustain plaintiffs' ninth assignment of error, which was as follows:

(9.) The learned judge erred in disaffirming defendants' third point, which was as follows:

"3. The words 'woolen rags, shoddy, mungo, waste, and flocks,' used in the tariff act, are to be interpreted in their commercial sense, and, whether the destruction of the wool tops was
361 accidental or intentional, if the resultant product was commercially known as waste it was dutiable as such."

X. The learned circuit judge erred in refusing to sustain plaintiffs' tenth assignment of error, which was as follows:

(10.) The learned judge erred in disaffirming defendants' fourth point, which was as follows:

"4. Even if the imported article was not produced before the tariff act of 1883 was passed, yet if when produced it was, according to the commercial understanding, included in the commercial designation of waste it was dutiable as such."

XI. The learned circuit judge erred in refusing to sustain plaintiffs' eleventh assignment of error, which was as follows:

(11.) The learned judge erred in disaffirming defendants' fifth point, which was as follows:

"5. If the imported article was intentionally manufactured from wool, then, even though that fact took it out of the legal definition of the word 'waste' as used in the tariff act, it would be dutiable only as a 'manufacture of wool,' and your verdict must therefore be for defendant-."

XII. The learned circuit judge erred in dismissing plaintiffs' exceptions and affirming the judgment of the district court.

And the said plaintiffs in error (defendants below) therefore pray that the judgment of the said circuit court may be reversed.

362 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

GEORGE W. PATTON, CHARLES J. BIGLEY, and MASON M. CULVER, Trading, &c., Pl'ffs in Error,	No. 1. October
vs.	Sess., 1891.
THE UNITED STATES OF AMERICA, Def't in Error.	

Know all men by these presents that we, George W. Patton, Charles J. Bigley, Mason M. Culver, George Campbell, Thomas Dolan, W. H. Arrot, and Charles A. Furbush, are held and firmly bound unto the United States of America in the full and just sum of sixteen thousand dollars, to be paid to the said United States of America, its certain attorney, executors, administrators, or as-

signs; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-fifth day of June, A. D. 1891.

Whereas lately, at a term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between George W. Patton, Charles J. Bigley, and Mason M. Culver, copartners trading as George W. Patton and Company, plaintiffs in error, and The United States of America, defendants in error, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation
363 directed to the said defendant, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next ensuing.

Now, the condition of the above obligation is such that if the said George W. Patton, Charles J. Bigley, and Mason M. Culver shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

G. W. PATTON.	[SEAL.]
CHAS. J. BIGLEY.	[SEAL.]
MASON M. CULVER.	[SEAL.]
GEORGE CAMPBELL.	[SEAL.]
THOMAS DOLAN.	[SEAL.]
W. H. ARROTT.	[SEAL.]
CHARLES A. FURBUSH.	[SEAL.]

Sealed and delivered in presence of—

SAMUEL BELL.
JOHN A. MERRICK.

Approved:

M. W. ACHESON, *Cir. J.*

[Endorsed:] No. 1. October sess., 1891. Circuit court United States. George W. Patton *et al. vs.* The United States of America. Bond surwrit of error. Filed June 25, 1891.

364 UNITED STATES OF AMERICA, }
Eastern District of Pennsylvania, } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of George W. Patton *et al.*, plaintiffs in error, *vs.* The United States of America, defendant in error, No. 1, October session, 1891, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 11th day of July, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and sixteenth.

Seal U. S. Circuit Court, E. D. Pennsylvania.

SAMUEL BELL,
Clerk of C. C.

Endorsed on cover: Case No. 14,741. E. Pennsylvania C. C. U. S. No. 227. George W. Patton, Charles J. Bigley, and Mason M. Culver, copartners trading as George W. Patton & Company, plaintiffs in error, *vs.* The United States. Filed July 15, 1891.

Office Supreme Court, U. S.
FILED
JAN 31 1895
JAMES H. McKENNEY,
CLERK.

RECORD CASE No. 14,744

IN THE

Supreme Court of the United States.

No. 227. October Term, 1894.

George W. Patton, Charles J. Bigley and Mason M. Culver, Copartners trading as George W. Patton & Co., Plaintiffs in Error,

vs.

The United States, Defendant in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR PLAINTIFFS IN ERROR.

INDEX.

	PAGE
Statement of the Case	1
Specifications of Error	6
Argument	10

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Plaintiffs in Error.

Allen, Lane & Scott, Prs., Phila.

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INDEX.

	PAGE
Statement of the Case	1
Specifications of Error	6
Argument	10

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Plaintiffs in Error.

Allen, Lane & Scott, Prs., Phila.

(14,741)

SUPREME COURT OF THE UNITED STATES.

George W. Patton, Charles J. Bigley and Mason M. Culver, Copartners, trading as George W. Patton & Co., Plaintiffs in Error,

vs.

The United States, Defendant in Error.

October Term, 1894.

No. 227.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

APPELLANTS' BRIEF.

I. STATEMENT OF THE CASE.

This was an action brought by the United States against George W. Patton & Co. to recover certain duties claimed to be due on two importations from Liverpool; one on November 18th, 1888, and the other on November 30th, 1888. The merchandise consisted of thirty-three bales, entered by the importer as wool waste and claimed by him to be dutiable at ten cents per pound under paragraph 360, of Schedule K of the Act of March the 3d, 1883, as follows:—

360. Woolen rags, shoddy, mungo, waste and flocks, ten cents per pound.

The Collector classified the merchandise of the first importation as—

Scoured wool, broken tops, class 1, costing under thirty cents a pound in the unwashed condition.

And the merchandise of the second importation as—

Scoured broken tops costing under thirty cents a pound in the unwashed condition.

Upon this classification the Collector imposed, first the duty of ten cents per pound under paragraphs 351, 352 and 356 of the Act of March 3d, 1883, as follows:—

351. All wools, hair of the alpaca, goat and other like animals, shall be divided, for the purpose of fixing the duties to be charged thereon, into the three following classes:—

352. Class 1, clothing wools. That is to say, merino, mestiza, metz or metis wools, or other wools of merino blood, immediate or remote, down clothing wools and wools of like character with any of the preceding, including such as have been heretofore usually imported into the United States from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada and elsewhere, and also including all wools not hereinafter described or designated in classes 2 and 3.

356. Wools of the first class, the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall be thirty cents or less per pound, ten cents per pound; wools of the same class, the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall exceed thirty cents per pound, twelve cents per pound.

The Collector having imposed this duty of ten cents per pound under the paragraphs just quoted, then tripled that duty under the first part of paragraph 356 of the Act of 1883, as follows:—

355. The duty on wools of the first class which shall be imported washed, shall be twice the amount of the duty to which they would be subjected if imported unwashed; and the duty on wools of all classes which shall be imported scoured, shall be three times the duty to which they would be subjected if imported unwashed.

The Collector thus having tripled the duty of ten cents per pound on these goods, then proceeded to double the triple duty under the second part of paragraph 355 of the Act of 1883 as follows:—

The duty upon wool of the sheep, or hair of the alpaca, goat and other like animals, which shall be imported in any other than ordinary condition, as now and heretofore practiced, or which shall be changed in its character or condition for the purpose of evading the duty, or which shall be reduced in value by the admixture of dirt, or any other foreign substance, shall be twice the duty to which it would be otherwise subject.

The importer had paid upon the entry of the goods the estimated duties, viz., ten cents per pound, and had then received the goods. The effect of the Collector's action was to impose a duty six times the amount that had been paid, and greater than the whole value of the goods. To recover the difference between the duty paid upon the entry and the duty imposed by the Collector, the United States brought the present suit, and the question involved is whether the merchandise is dutiable at ten cents per pound as waste, or at ten cents per pound as wool of the first class, with the duty tripled because the wool had been scoured, and then doubled because it had been changed in its character or condition.

Upon the trial it was suggested that there was a third paragraph of the Tariff Act under which the merchandise might be dutiable, namely, paragraph 361 Schedule K of the Act of 1883, as follows:—

361. Woolen cloths, woolen shawls, and all manufactures of wool of every description, made wholly or in part of wool, not specially enumerated or provided for in this Act, valued at not exceeding eighty cents per pound, thirty-five cents per pound, and thirty-five per centum *ad valorem;* valued at and above eighty cents per pound, thirty-five cents per pound, and in addition thereto forty per centum *ad valorem.*

The facts with regard to the character of the merchandise which gave rise to the foregoing questions, are as follows:—

In the preparation and manufacture of wool it passes through a number of processes. In the first place, it is scoured. It is then carded and prepared; it is then put upon a comb, from which it comes in long lengths, known as slivers or slubbing. It is then put through a process called gilling, which forms the slivers into a less number of slivers of greater thickness. These slivers are then taken into the drawing room and finished, and come out of the drawing room

in the form of round balls called "tops." These tops become new articles of merchandise, which are sold to the worsted spinners, who spin them into worsted yarn. In making the tops it is often the practice to mix together different kinds of wool of various prices. In the process of making the top various short ends of wool are produced, which are called, and sold in the trade as, "Botany laps" or "Botany "waste," the word "laps" being the synonym for the word "waste" in the English market. After the top is produced, it sometimes turns out that it is shorter in staple than is desired, or not of the proper color, or that it has burrs, and it sometimes happens that after keeping perfect tops in stock a long time they become partially discolored or unmerchantable. Where the tops are inferior when originally produced, or have become, through any cause, deteriorated, it has always been the practice in England to break them up, the resultant product of such breaking up being an article precisely similar to the short ends called "Botany laps" or "Botany waste," and being known and sold commercially as "Botany laps" or "Botany waste." This has been the practice for very many years in England, long prior to the Act of 1883, and the short ends produced, either unintentionally in the process of making tops, or intentionally by breaking up inferior or deteriorated tops, have always been known and sold as an article of trade under the ordinary name of waste. Occasionally also, owing to the condition of the market and a particular demand for waste, new and merchantable tops have to a limited extent been occasionally broken up to produce this waste; but this was only an occasional practice, the waste ordinarily produced from broken tops being produced from tops which were inferior or deteriorated.

In 1888, owing to the depression of the woolen trade in England and the demand for waste in this country, the price of tops became so low and the price of waste so high that it was profitable to break up tops then on hand in England and import the resultant waste into this country. The merchandise in the present case was broken up by an English manufacturer and sold to the importer as waste, and was so

imported by him. It appeared from the evidence that waste, whether intentionally or unintentionally produced, was an article having different qualities from the wool which had formed the basis of the manufacturing processes producing it. All waste, in common with the other articles classified under the same paragraph of the Tariff Act, such as shoddy, mungo and flocks, is used as an adulterant. In the processes of manufacture the fibre of the wool has been in a certain measure destroyed by having had the noils and short fibre, together with the seeds and vegetable matter, combed out, taking out a certain percentage of the felting fibre of the wool, and the result is that it cannot go through successfully the second process of manufacture. It can be used to the extent of a certain percentage as an adulterant, and for this purpose it has always been bought and sold. It also appeared that the article imported in the present case did not differ in character use, or commercial designation from the commercial article known as waste both before and since the Act of 1883; that it was not in any commercial sense wool or scoured wool, but was the article known under the commercial designation of waste and could only be used in common with other waste as an adulterant. The only difference between the imported article and the waste ordinarily sold before 1883 was that ordinarily (but not always) the waste before 1883 was produced either unintentionally in the process of manufacture or intentionally from imperfect or deteriorated tops, while the imported article in the present case was produced intentionally from perfect tops.

Notwithstanding that these facts were shown at the trial, the trial judge instructed the jury: First, that according to the testimony on both sides only such particles of wool as were thrown off in the processes of manufacture into woolen or worsted fabrics were known as wool waste at the date of the statute; second, that whether or not the wool tops were a manufacture of wool, the fragments of wool tops when destroyed could not be considered a manufacture; and third, that while the imported article was not commercially designated as scoured wool, it was wool which had been scoured

within the meaning of the statute, and that if it had been changed from the condition of what was commercially known as scoured wool, and thus brought here in other than the ordinary condition, it was liable to have the triple duty imposed on scoured wool doubled under paragraph 355. The trial judge then told the jury that it followed from what the court had said, that the United States was entitled to recover the whole of the claim. The jury thereupon rendered a verdict to the plaintiff for the full amount of the claim, and also made a special finding of fact, under an agreement for such special finding, as follows:—

> And the jury do further find that the tops which were broken into fragments, constituting this importation, were so broken for the purpose of changing the condition of the wool from tops into the fragments resembling waste, for the purpose of evading the duty to which the wool in the form of tops would be subjected on importation into this country; or evading duty to which the importers believed the tops would be liable.

Judgment having been entered in favor of the plaintiffs on this verdict, and the Circuit Court having affirmed the judgment without opinion, the present writ of error was taken to this court.

II. SPECIFICATION OF ERRORS.

I. The learned circuit judge erred in refusing to sustain plaintiffs' first assignment of error, which was as follows:—

(1.) The learned judge erred in instructing the jury as follows:—

"The interpretation of the statute is for the court, and I "instruct you that the term 'wool waste,' as there employed, "signifies such parts or particles of the wool as are thrown off "in the several processes of its manufacture into wool and "worsted fabrics. According to the testimony on both sides "such alone was known as 'wool waste' at the date of the "statute and prior thereto. The importation in question though "called 'wool waste,' seems to be so called only because of its "resemblance to what was formerly known by this designation. "It does not consist of refuse or broken particles thrown off

"in the process of manufacture, as before described, but is "made intentionally by tearing up what are called 'wool "'tops,' which consist, as you have seen, of wool which "has been put through several processes and prepared for "spinning. The term 'waste,' as the statute employs it, does "not embrace this commodity."

II. The learned circuit judge erred in refusing to sustain plaintiffs' second assignment of error, which was as follows:—

(2.) The learned judge erred in instructing the jury as follows:—

"Is it a 'manufacture of wool,' such as the term 'manu- "facture' used in the statute contemplated? In the judgment "of the court it is not. Without undertaking to define par- "ticularly what this term does embrace, it is sufficient to say "that it does not include these torn fragments of 'wool "'tops.' It may be questioned, possibly, whether 'tops' "themselves are embraced; whether the term embraces any- "thing short of a fabric virtually completed for use; but "granted that it embraces 'tops,' it does not embrace their "fragments when destroyed. Such fragments cannot, there- "fore, be said to constitute a 'manufacture' within the mean- "ing of the language as employed in the statute. It would "be useless to enlarge on the subject."

III. The learned circuit judge erred in refusing to sustain plaintiffs' third assignment of errors, which was as follows:—

(3.) The learned judge erred in instructing the jury as follows:—

"We come now to the third of defendants' allegations— "that the article is not 'scoured wool.' It seems clear "from the testimony that it is not what is commercially "so designated; but the language of the statute, which "refers to wool imported, scoured, in some other than the "ordinary condition in which such wools are commonly im- "ported, does not, and is not intended to describe what is "commercially designated 'scoured wool.' The change worked "upon it to produce the new condition at once distinguished

"it. It is no longer in the condition to which the term com-
"mercially used applies. If it came in the condition of what
"is commercially known as scoured wool it necessarily would
"not fall within the provision imposing a double duty. Con-
'gress contemplated that such wool might be exchanged by
"additional work or manipulation, and thus brought here in
"other than the ordinary condition in which it is customarily
"brought, and therefore imposed the penalty of a double duty
"where this is done. If, therefore, this wool was imported
"scoured and in a condition other than that in which such
"wool was customarily imported in March, 1883, and pre-
"viously, it fell within the provisions referred to, and the duty
"assessed is right."

IV. The learned circuit judge erred in refusing to sustain plaintiffs' fourth assignment of error, which was as follows:—

(4.) The learned judge erred in instructing the jury as follows:—

"It would follow, gentlemen, from what the court has said
"to you, while I do not take the case from you because it
"is submitted upon the evidence, that the plaintiff is entitled
"to recover the amount of the claim."

V. The learned circuit judge erred in refusing to sustain plaintiffs' fifth assignment of error, which was as follows:—

(5.) The learned judge erred in instructing the jury as follows:—

"The decision of the customs officers not only determined
"*prima facie* that the wool imported was in other than the
"condition in which such wool was imported in 1883 and
"before, but also that it was changed from one condition to
"another for the purpose of avoiding duty."

VI. The learned circuit judge erred in refusing to sustain plaintiffs' sixth assignment of error, which was as follows:—

(6.) The learned judge erred in instructing the jury as follows:—

"Here the wool was changed from the condition of 'wool

"'tops' to that in which you see it, resembling waste. If the "object of so changing its condition was to avoid the pay- "ment of duty, such as would be levied on tops, the asess- "ment made by the customs officers was right."

VII. The learned circuit judge erred in refusing to sustain plaintiffs' seventh assignment of error, which was as follows:—

(7.) The learned judge erred in disaffirming defendants' first point, which was as follows:—

"1. The evidence of both plaintiff's and defendants' wit- "nesses being that the article imported was not scoured "wool, it was not liable to duty as such, and your verdict "should be for defendant."

VIII. The learned circuit judge erred in refusing to sustain plaintiffs' eighth assignment of error, which was as follows:—

(8.) The learned judge erred in disaffirming defendants' second point, which was as follows:—

"2. There being no evidence that the article imported was "scoured wool put into extraordinary condition for importa- "tion, but on the contrary, the evidence on both sides being "that the article imported was an article known as waste or "broken top, manufactured by breaking up another article of "commerce known as wool top, which had been manufactured "for general purposes by a series of processes from wool, "your verdict should be for defendant."

IX. The learned circuit judge erred in refusing to sustain plaintiffs' ninth assignment of error, which was as follows:—

(9.) The learned judge erred is disaffirming defendants' third point, which was as follows:—

"3. The words 'woolen rags, shoddy, mungo, waste, 'and "flocks,' used in the Tariff Act, are to be interpreted in their "commercial sense, and, whether the destruction of the wool "tops was accidental or intentional, if the resultant product "was commercially known as waste it was dutiable as such."

X. The learned circuit judge erred in refusing to sustain plaintiffs' tenth assignment or error, which was as follows:—

(10.) The learned judge erred in disaffirming defendants' fourth point, which was as follows:—

"4. Even if the imported article was not produced before "the Tariff Act of 1883 was passed, yet if when produced it "was, according to the commercial understanding, included in "the commercial designation of waste, it was dutiable as such."

XI. The learned circuit judge erred in refusing to sustain plaintiffs' eleventh assignment of error, which was as follows:—

(11.) The learned judge erred in disaffirming defendants' fifth point, which was as follows:—

"5. If the imported article was intentionally manufactured "from wool, then, even though that fact took it out of the "legal definition of the word 'waste,' as used in the Tariff Act, "it would be dutiable only as a 'manufacture of wool,' and "your verdict must therefore be for defendant."

XII. The learned circuit judge erred in dismissing plaintiffs' exceptions and affirming the judgment of the district court.

III. ARGUMENT.

Three questions arise in this case, viz:—

1. Was the imported merchandise "waste," and therefore subject to a duty of ten cents per pound under paragraph 360?

2. If not "waste," was the merchandise a "manufacture of "wool" and therefore dutiable under paragraph 361?

3. Was the merchandise "wool" of the first class dutiable under paragraph 356, and which had been scoured and then changed in its character or condition, within the meaning of paragraph 355?

As to each of these questions, there also arises an additional inquiry, whether the question was not one of fact, which should have been submitted to the jury and not decided by the court?

Each of these questions will be considered separately.

AS TO THE FIRST QUESTION, VIZ., WAS THE MERCHANDISE "WASTE?"

This question is raised by the first, fourth, ninth and tenth assignments of error.

With regard to the question whether the merchandise was "waste," the court gave a binding instruction to the jury as follows:—

> The interpretation of the statute is for the court, and I instruct you that the term "wool waste," as there employed, signifies such parts or particles of the wool as are thrown off in the several processes of its manufacture into wool and worsted fabrics. According to the testimony on both sides, such alone was known as "wool waste" at the date of the statute and prior thereto. The importation in question, though called "wool waste," seems to be so called only because of its resemblance to what was formerly known by this designation. It does not consist of refuse or broken particles thrown off in the process of manufacture, as before described, but is made intentionally, by tearing up what are called "wool tops," which consist, as you have seen, of wool which has been put through several processes and prepared for spinning. The term "waste," as the statute employs it, does not embrace this commodity.

It will be at once observed that this binding instruction of the court as to the interpretation of the term "waste" as used in the statute, was based upon a question of fact, namely, that at the date of the statute, and prior thereto, waste included only refuse or broken particles thrown off in the process of the manufacture of wool. The court expressly states that this fact was established by the testimony on both sides. Indeed, without entire unanimity in the testimony the court could not have decided the question of fact as to what was known in the commercial world as waste at and before the statute, since that was necessarily a question

for the jury, and it was only upon the supposition stated by the court, that all the witnesses agreed that at the date of the statute waste included only refuse and broken particles thrown off in the manufacture of wool, that the court could give a binding instruction as to the law applicable to such a state of facts. The first inquiry in the present case, therefore, is, was the court justified in this statement as to the evidence, since if there was evidence to go to the jury that prior to the passage of the statute waste was produced by breaking up tops, or that the method of production did not affect the commercial character of the article, the court was clearly in error in giving a binding instruction as matter of law?

On this point it is submitted that the charge of the court was based upon misconception of the testimony, probably due to the fact that the trial commenced on May 7th and did not finish until May 12th. It is to be remembered that it is sufficient for the plaintiff in error to show that there was *some* testimony, proper to have been submitted to the jury, that waste at the date of the statute included merchandise of the character of this importation, since without regard to the *weight* of the evidence, if there was *any substantial evidence*, the question should have been submitted to the jury. It is submitted, however, that the great weight of the evidence was that merchandise of the character in question, whether produced intentionally by breaking up tops, or unintentionally in the process of manufacture, was and had been long before the statute, known as waste, and so bought and sold. In order that there may be no controversy over this part of the case, the following extracts are given from the testimony of witnesses on both sides:—

Joseph Knowles, a witness called on behalf of the Government, testified (pages 29, 30 and 33 of the Record) as follows:—

Q. I believe it is a constant practice to mix together different kinds of Botany wool in the combing for the purpose of producing a top—a combined top?

A. Yes; it depends upon what they require the top for.

Q. To produce a top which may be required, you mix together different kinds of wool?

A. Yes.

Q. At infinitely varying prices?

A. Yes.

Q. I dare say you sometimes find, after using the best judgment you can, that the top comes in much shorter than you anticipated—shorter in staple?

A. Yes.

Q. I believe also, Mr. Knowles, that you very often do not get as good a color as you would have anticipated in the top?

A. It does not always come out as we expect in color.

Q. And in such cases the top would be worth very much less money than it would otherwise have been?

A. Yes.

Q. Now in such cases as those, is not the top sometimes broken up for the purpose of being recombed along with something of a longer staple?

A. Yes.

Q. In order to improve the length of the staple?

A. Yes.

Q. Or in the same way, with something of a better color, in order to produce a better-colored top?

A. Yes.

Q. Is it not also frequently the case that a top is broken up for the purpose of being recarded and improved?

A. Yes.

Q. To get out the burrs?

A. Yes.

* * * * * * * * *

Q. Now, however, these Botany laps are made. Whether by breaking up the top or whether they be combers' or spinners' laps, what do you call them—under what denomination do they come?

A. They come under the denomination in the trade here of "Botany laps" or "Botany waste."

Q. Are the terms synonymous?

A. Yes.

* * * * * * * * *

Q. And whether this broken top (a sample of which has been produced) is produced by the comber or whether it is broken up—whatever the intention may be—when it is in point of fact broken up, does it differ in any respect from ordinary Botany laps?

A. No; it is sold as Botany laps or Botany waste. We have sold it as that.

Q. Whatever the cause of breaking up, is it sold as waste?

A. It is waste—Botany waste—broken up.

Q. But as I understand you, you never sold an article like this (produced) so broken up until you commenced your dealings with Patton in June?

A. Yes; before that.

Q. How long?

A. I have sold a shipment or two occasionally for our home trade years back.

Q. Did you break it up for them?

A. Yes.

Q. When did you first commence it?

A. We may have broken a bag of tops up, now and again, for years.

MR. LUPTON, a witness called on behalf of the Government, testified (page 50 of the Record):—

Q. I understood you to say, although not in large quantities, you had seen tops broken before the period you speak of—the last two or three years?

A. Yes.

Q. Tell us what circumstances led to their being broken on these occasions.

A. The circumstances I can recollect have been where, we will say, the tops have been in stock a long time and they have not been well warehoused; they have not been moved and the bags containing them may possibly have been on a damp floor, and they have come to manipulate these tops for business purposes; they found right underneath the ball the tops had got rotten and become tender by age and by being badly taken care of, and have been, to a certain extent discolored, and therefore spoilt for the purpose for which they were originally intended, and in that case, in those mills they will employ a little lad at a small wage, and tell him to break the tops up and throw them into the laps. If there is a large quantity of them they will make them into one parcel and not mix them with the laps, but sell them as they are.

Q. In that case what are they sold as?

A. They would not be sold as anything, except under the designation of laps or waste.

MR. PATTON, the defendant, testified (pages 123 and 124 of the Record):—

Q. As I understand you, if in the process of making this article (top), you accidentally broke off a piece, that would be commercial waste?

A. That would be commercial waste, known as top waste.

Q. Suppose the top is completed and then you purposely break it up, what is the commercial article that results?

A. Waste.

Q. Are there different classes of waste, with their distinctive names?

A. Yes, sir.

Q. Mention some of them.

A. Top waste, roving waste, slubbing waste, ring waste, yarn waste and card waste.

Q. How long have there been divisions of waste?

A. Ever since wool manufacturing existed, I should say.

Q. How long have you been familiar with the article which you call top waste?

A. The first importation of top waste ever made by our firm was, I think, in 1881 or 1882.

Q. To your knowledge, how long has top waste existed as an article of commerce?

A. Ever since the manufacture of worsted yarn has existed by machinery.

Q. What is the difference between top waste and roving waste?

A. No material difference. Roving waste is still a soft waste like top waste, but one degree advanced in manufacture towards the spinning of worsted yarn. Ring waste is still further advanced, because it is made upon the mule while being spun into yarn. All the other processes prior to that are simply preparatory.

Q. Is there a distinction between soft waste and hard waste?

A. Yes, sir.

Q. What is hard waste?

A. Hard waste is the yarn after it comes from the mule or the spinning frame.

Q. Has there ever been any distinction, either prior or subsequent to 1883, as to the commercial designation in the trade of the article produced, with regard to the manufacture by which it was produced, that is to say, whether it was thrown off accidentally in the process of manufacture, or whether it was broken up intentionally after the thing was produced?

A. No; I do not think there was ever any distinction. I think it was all sold as waste.

By THE COURT:

Q. That is, there never was any distinction whether, it was produced in the manufacture or whether it was purposely broken up?

A. No, sir; I do not think so.

By MR. PRICHARD:

Q. Is it an entirely new thing to break up top into waste?

A. Oh, no, sir.

Q. How long have you been familiar with that as an article of waste; that is, waste which is intentionally produced either here or abroad by breaking up top?

A. Twenty years.

Q. Under what circumstances would top be purposely broken up to make waste?

A. As I have before stated, if the top proved after manufacture that the fibre was too short to spin into a certain number of yarn, or if it had been dyed and the fibre impaired in the process of dyeing, or if it had laid a long time in the man's factory and become moth eaten, or if it had remained a long time in the maker's factory and had become yellow. Those are all the conditions which would induce the man to break the top up and sell it for waste just in accordance with the relative price which waste bore to the manufactured article.

By THE COURT:

Q. Would these several conditions of top be such as to render it unfit for manufacture into fabric?

A. Yes, sir.

Q. Then it would be broken up?

A. Yes, sir. There is a sample of broken top. (Defendants' colored sample.) This represents a sale of about seventeen hundred pounds. This sample, excepting in quality, excepting in the fibre, the quality of the fibre of the material, is in itself more valuable than this (sample A), because it is in larger pieces. This top is of infinitely more value than the sample (A). Nodoubt this was a completed article and it has been destroyed. I do not know for what reason, but I know that the destruction has rendered a difference of thirty or forty cents in its value. It has been bought by me, a portion of it, as waste, and I know has been sold to another consumer also as waste.

JAMES DOBSON, a witness called for the defendant, testified (pages 135, 137 and 141 of the Record):—

Q. Please look at the article before you (Government's sample A) and say what that article is?

A. This is worsted lap waste, lap or top waste.

Q. How long have you been familiar with that article?

A. Since 1866 with this particular article.

Q. What has been its commercial designation during that time?

A. Waste, worsted waste, lap waste or roving waste or hard waste, whatever it may be in the different processes of manufacture.

* * * * * * * * *

Q. Can you tell whether that waste, sample A, has or has not been intentionally made?

A. That I could not say. There is nothing, in my judgment, to show that it has been intentionally made, because on account when you break it in making the pieces go through the machinery, you have got to break it off with a taper, so it will make a joint and not a lump. When the yarn is made, the evener you can make it on the machine the evener your yarn will be when it is finished.

Q. Is there any difference in the article, whether it is intentionally or accidentally made?

A. Difference in which way?

Q. In any way?

A. In its appearance?

Q. Commercial designation, or appearance, or anything else?

A. No, sir; there is no difference in the commercial designation.

By THE COURT:

Q. In the appearance or value?

A. There is none in the appearance or value.

Q. Whether it is made accidentally, in the manufacture of fabrics, or whether it is made intentionally by breaking up the top?

A. No, sir; there is no difference.

By MR. PRICHARD:

Q. Has there ever been any difference in the trade between waste that was intentionally or waste that was accidentally made?

A. Not that I know of. I never heard of any.

* * * * * * * * *

Q. How long have you known this article, sample A, as an article of trade?

A. Since 1866.

Q. Has it or has it not had a commercial designation since that time?

A. As waste, to my knowledge, since 1866.

Q. That is to say, you do not mean that you have known that the article which you knew under that name was intentionally produced, but you have known that article as an article of trade since 1866, however produced?

A. Yes, sir.

JOSEPH P. TRUITT, a witness called for the defendant (page 142 of the Record), testified:—

Q. Please look at sample A, the Patton importation, and please state what is the commercial designation of that article.

A. Waste.

Q. How long have you been familiar with such an article as that?

A. Ever since I have known anything about worsted yarn.

Q. What has been its commercial designation during all that time?

A. The general term is waste, specified by the particular part of the mill in which it was made; that would come under the term top waste or lap waste.

Q. Is waste classified into different kinds?

A. Different kinds; top waste, lap waste, roving waste, ring waste, hard waste and so on, just according to locality in which it was made.

Q. Varying in value, I suppose, from very cheap to very expensive?

A. Varying in value in accordance with where it could be used, and sometimes in accordance with the demands of the trade.

W. H. MCCALLUM, a witness called by the defendant, testified (pages 152 and 153 of the Record:—

Q. Look at the sample A before you and state what that article is; what its commercial name is.

A. That is top waste.

Q. How long have you been familiar with top waste?

A. Ever since I started manufacturing, in 1872.

Q. Has that article ever had any other commercial designation than waste?

A. I have not known it.

M. H. CHADWICK, a witness called for the defendant, testified (page 158 of the Record):—

Q. Have you ever had any experience in the examination and handling of wools and wool products?

A. Yes, sir.

Q. What experience have you had?

A. I have been in the Custom House four years, and it was my duty to examine waste in particular.

Q. What years were you at the Custom House?

A. In 1881, 1882, 1883 and 1884, and part of 1885.

Q. Look at the sample A before you and state whether you are familiar with an article like that?

A. Yes, sir.

Q. State whether you have handled that in the years you were examining at the Custom House?

A. Yes, sir.

Q. What is that?

A. This is what I call sliver waste.

Q. And were articles like that imported during the years you were at the Custom House?

A. Regularly.

Q. In what shape were they imported—mixed with other goods or separate?

A. Sometimes they were separate, if it was in the same shipment, and sometimes they were mixed together—generally mixed together—rove waste, drawing waste and sliver waste.

Q. Is there any difference in the classification of them—whether mixed with other waste or separate?

A. No.

Q. Is there any difference in the commercial designation of them, whether separate or mixed?

A. No; merely as waste.

GEORGE CAMPBELL, a witness called for the defendant, testified (page 162 of the Record):—

Q. How long have you been familiar with wool and its products?

A. Thirty years.

Q. Look at that article before you, sample A, and tell me how long you have been familiar with that or articles substantially similar?

A. Over twenty years.

Q. What is its commercial designation?

A. Top waste.

Q. Has it ever had any other commercial designation?

A. I never knew of any other.

* * * * * * * * *

Q. (Indicating.) Is that a sample of top waste made in your own factory?

A. That resembles what we make; it is our drawing room waste.

Q. That was not intentionally made?

A. Oh no, sir; we are making that every hour in the day.

Q. Is that or not the same in value and use as the sample you have there?

A. Yes, sir; just about.

It will be seen by the foregoing testimony that the court was not correct in saying that the testimony on both sides was that waste consisted of refuse or broken particles thrown off in the process of manufacture, as distinguished from particles intentionally made by tearing up wool tops. On the contrary, the evidence on both sides conclusively shows that the creation of waste by the intentional tearing up of completed wool tops was a practice which had existed long prior to the Act of 1883. It is fair to the Government to say that the substantial effect of the testimony was that the intentional breaking of new and perfect tops, while occasionally done in England for the purpose of making waste, as testified by the Government's witness, Mr. Knowles, on page 33 of the Record, was not done to any considerable extent until the peculiar condition of the wool and worsted market in England and America rendered it profitable to do so at a particular period in considerable quantities; but it did appear that the intentional breaking up of new and perfect tops was an occasional practice, and the breaking up of new tops which had become unsalable was a constant practice in England, and that the resultant product from such intentional breaking up of tops was precisely the same product as resulted from the throwing off of the short ends in the manufacture of the tops, and that no distinction was made in the purchase and sale of the article, the intentional and the unintentional product all being classed alike as waste, and so sold both before and since the Act of 1883. And the same testimony conclusively established the fact that there was no difference in the commercial designation or use of the article, whether it was produced by intentionally breaking up an unsalable top, or intentionally breaking up a new and salable

top. The resultant product might, perhaps, vary in value, although the testimony already quoted seemed to indicate that it would not, but it is certain that it did not differ in commercial designation or use. The initial error, therefore, committed by the court in its charge, was the assumption that there was no question of fact as to what was waste, and that all the witnesses agreed that waste was an article composed exclusively of refuse or broken particles thrown off in the process of manufacture, and not of broken particles produced by the intentional breaking up of an article of manufacture. This assumption, as we have shown, was not warranted by the testimony. The question as to what was included in the commercial article known as waste, and specifically taxed under that name in the Tariff Act, was a question of fact, and there was abundant evidence to have been submitted to the jury on the question whether the plaintiffs' importation fell within the class of merchandise known as waste before the Act of 1883.

Another and equally vital and error was committed by the trial judge in entirely disregarding the question of commercial designation, to which his attention was called by defendants' third point. This question is always a question of fact, and it is the first test of classification in interpreting the statute. In the case of

Robertson *vs.* Salomon, 130 U. S., 412,

this court, speaking by Mr. Justice Bradley, said :—

> The commercial designation, as we have frequently decided, is the first and most important designation to be ascertained in settling the meaning and application of the tariff laws. See Arthur *vs.* Lahey, 96 U. S., 112–118; Barber *vs.* Schell, 107 U. S., 617–623; Worthington *vs.* Abbott, 124 U. S., 434–436; Arthur's Executors *vs.* Butterfield, 125 U. S., 70–75. But if the commercial designation fails to give an article its proper place in the classifications of the law, then resort must necessarily be had to the common designation.

And again in

American Net, &c., Co. *vs.* Worthington, 141 U. S., 468, 471,

this court, speaking by Mr. Justice Brown, said :—

It is a cardinal rule of this court that in fixing the classification of goods for the payment of duties, the name or designation of the goods is to be understood in its known commercial sense and that their denomination in the market when the law was passed will control their classification without regard to their scientific designation, the material of which they may be made or the use to which they may be applied.

And in the very recent case of

Boyle *vs.* Magone, 152 U. S., 623,

where, as in this case, the court below had decided the question of classification as a matter of law upon its own interpretation of the Act, without regard to evidence offered as to commercial designation, this court reversed the judgment, saying (Mr. Justice Gray delivering the opinion):—

The Circuit Court in directing a verdict for the defendant ruled in substance, that as matter of law and without regard to commercial usage these articles came within the words "sauces of all kinds" in the Tariff Act. We are unable to concur in that view; or to say, either of our judicial knowledge or in view of the evidence introduced, that these articles are necessarily "sauces" of any kind; still less, that this is so clear as to exclude the usual test of commercial designation. Cadwalader *vs.* Zeh, 151 U. S., 171, 176.

Commercial classification has also been the test recoginized and applied by customs officers themselves.

In the case of

Importation of F. Muhlhauser & Co., Synopsis of Decisions, 10,728, G. A., 281,

the Board of General Appraisers in passing upon an importation of ring waste claimed by the Collector to be wool, said:—

The merchandise in question is imported and known as "ring waste," or "white ring waste." It is wool of a comparatively superior quality, and was assessed at a duty of thirty cents per pound. The importation was made in April and May, 1890.

The importers contend that at the time the Tariff Act of March 3d, 1883, was passed this ring waste was commercially known as *woolen waste*, and as such it was dutiable only at ten cents per pound, under paragraph 361 of said Act (section 2502, U. S. Rev. Stat., Schedule K), which reads as follows: "Woolen rags, shoddy, mungo, *waste* and flocks, ten cents "per pound."

It is enough to say that we are satisfied that the merchandise under consideration is known commercially as "woolen waste," and was so known to importers and manufacturers at the time the Act of March 3d, 1883, was passed.

This merchandise is shown to be identical in kind and quality with that involved in the case of Muhlhauser *vs.* Gary, Collector, recently tried in the United States Circuit Court for the Northern District of Ohio—in fact, a portion of the same purchase and importation. The full record of that trial is before us. The court charged the jury if they were satisfied from the evidence that the merchandise was known to the commercial world as "woolen waste," it was dutiable under paragraph 361, as contended by the plaintiffs, and their verdict was for the plaintiffs in that issue. That charge was manifestly correct, and under it, as applied to this case, the appellants are entitled to a decision in their favor.

The Treasury practice had uniformly classified "ring waste," like that in question, as woolen waste, under T. I., 361, until the decision made on February 18th, 1890 (Synopsis, 9871), when that practice was changed. It is a strong point favorable to the equity of the importers' claim in this case, that they purchased this merchandise on the faith of former decisions, prior to the promulgation of the more recent ruling. (Syn. Treas. Dec., 7589.)

But we place our decision on the commercial designation of the merchandise. It is known in the trade as "woolen waste," and that fact settles the classification.

The decision of the Collector is reversed, and he is instructed to reliquidate the entries pursuant to law.

The court below treated the question of classification as if it depended entirely upon the method of producing the imported article, and not upon its commercial character and designation when produced. Whatever may have been the effect of the testimony as to whether the article was intentionally manufactured from new tops prior to 1883, there can be no question that there was abundant testimony to the effect that the article when thus intentionally produced was an article well known prior to 1883, although produced in a different way, and that this well-known article had a definite trade designation, which designation was used in the Tariff Act as the basis for the imposition of the duty. Ignoring this fact, the trial judge first erroneously told the jury that the evidence was that waste had not been produced prior to 1883 by any other process than the accidental one of throwing off refuse particles in course of manufacture, and then having erroneously instructed them as to a question of fact which was in issue, he then erroneously instructed them as to the law by telling them that if the article was intentionally produced it could not be waste, utterly ignoring the testi-

mony, which showed conclusively, that this article, however produced, was commercially known as waste, and as waste only, prior to the Act of 1883.

Another question of law raised by the fourth point of the defendants, included in the tenth assignment of error, was, it is submitted, erroneously ruled by the court below. Conceding that the evidence had established the fact that the merchandise in question had never been intentionally produced before the Act of 1883, yet if when produced after that Act it was according to the commercial understanding included in the commercial designation of waste, it would be dutiable under the tariff law as waste. This was the rule established by this court in the two cases of—

Newman *vs.* Arthur, 109 U. S., 132;
Pickhardt *vs.* Merritt, 132 U. S., 252.

In the former case, this court, speaking by Mr. Justice Matthews, said:—

> The fact that at the date of the passage of the Act goods of the kind in question had not been manufactured, cannot withdraw them from the class to which they belong as described in the statute, where, as in the present case, the language fairly and clearly includes them.

And in the latter case, this court, speaking by Mr. Justice Blatchford, said:—

> The court instructed the jury that if the four articles in question, according to the understanding of commercial men, dealers in and importers of them, would, when imported, "be included in the class of articles "known as aniline dyes, by whatever name they had come to be known," they were subject to duty as aniline dyes, and the defendant was entitled to a verdict. We see no objection to this instruction. It was in accordance with the established rule that in interpreting customs statutes commercial terms are to be construed according to the commercial understanding in regard to them. Nor is this rule inapplicable to this case because the articles in question were unknown in 1874, when the statute was enacted. As the court said to the jury, the law was made for the future; and the term "aniline dyes and colors, by whatever name "known," included articles which should be commercially known, whenever afterwards imported, as "aniline dyes and colors." In Newman *vs.* Arthur, 109 U. S., 132, it was held that the fact that, at the date of an Act imposing duties, goods of a certain kind had not been manufactured,

does not withdraw them from the class to which they belong, when the language of the statute clearly and fairly includes them. But it is sufficient if it so includes them according to commercial understanding.

In the present case, the evidence of the witnesses on both sides was to the effect that this article when intentionally produced by breaking up new and perfect tops was waste, so known commercially, and had the same use and value as the article unintentionally produced.

MR. DELIUS, a witness called for the Government, testified (page 37 of the Record):—

Q. However produced, is or is not that as it is now, waste, as you called it just now? Is it now waste?

A. Well, I don't really know how to define waste. As it is now I should call it waste. It is not fit for anything else.

MR. RICHARDS, another witness called for the Government, said (pages 42 and 43 of the Record):—

Q. Can you tell us what is the commercial designation of that article?

A. I should call it waste.

* * * * * * * * *

Q. Whatever this may once have been, having been broken up and being in this form, does it then become waste in every sense of the term?

A. Yes: that is so.

Q. And I understand that Mr. J. W. Greenwood, whom you have mentioned, offered to you that which he did offer to you as waste?

A. As waste.

MR. LUPTON, another witness called for the Government, testified (page 49 of the Record):—

Q. Assume, for the purpose I am now going to put to you, that neither the United States Government or anybody else have the slightest fault to find with the process, in point of fact in this state is this waste or not?

A. Yes; under the form or shape that it is in now I should be inclined to call it waste.

And again (on page 51 of the Record), in speaking of the merchandise produced by breaking up new tops, the same witness said:—

Q. May I ask what you describe them as in your invoices to your customers?

A. I would not be certain.

Q. Would you undertake to say you did not describe them as Botany waste?

A. I will not be certain, because I have not personally described them myself. My invoice clerk would describe them, and I could not say what he has done.

Q. But they may have been described by you to your customers as Botany waste?

A. Quite possible.

Q. Were they, in point of fact, anything else but Botany waste?

A. Not in the shape they were in.

Q. And were they not in the same shape as the sample now produced?

A. Yes; very similar.

Mr. THEODORE C. SEARCH, a witness called in behalf of the Government, testified (pages 100 and 101 of the Record):—

Q. State whether you know what that article that is spoken of in the Tariff Act as top waste is.

A. No. You take that top and pass it through a gill box preparatory to making the first drawings; you often leave a lap formed from that on the apron which is connected with machine. It commences in a very small way, very frequently a few fibres of that top, and it passes through and adheres to this leather apron and passes around it; the leather apron is perpendicular to the machine. It is put there to keep the iron roll, through which it passes, from getting wool fibre, and it adheres to this apron. It finally gets there in such quantities as to break up the whole top; sometimes the whole of it will adhere, generally a portion of it, splitting that top. It does not destroy it in any other way, but simply splits it. When it gets in that condition the operator stops the machine, breaks it apart, and starts the machine running again, and while it is running carry off the part which has attached itself to the leather apron; that part will probably be three feet long, and by some might be considered top waste. We return it right back on the machine; it passes right on through the next time, and comes out exactly as if it was intended to come out the first time. It makes no waste with us.

Q. That might be top waste?

A. That might be called top waste.

Q. It is longer a good bit than those pieces there?

A. Yes, sir; it is longer than these; three times as long as this (A). It runs from two to three feet in length.

Q. Suppose that was broken into pieces as small as that (indicating), it would still be top waste?

A. Yes, sir; if it was broken into pieces as small as that it would be top waste.

Q. Then you would not run it through?

A. No, sir.

Q. That being genuine top waste, tell us how that would be treated in order to get into any commercial article?

A. That would then go back into your card, as I described this would have to be done (A).

Q. That thing which would be top waste, and which would be so treated, would be an article which would resemble that before you (A)?*

A. Yes, sir.

Q. And differ in no respect from the article before you, would it?

A. Not if it was broken up.†

MR. KITCHING, a witness called for the Government, an examiner of wool in the New York Custom House, testifies (page 110 of the Record):—

Q. Wherein and in what respect does this article before you differ from that which was known as wool waste in March, 1883?

A. This appears to be all top or lap waste.

It thus appeared from the testimony of the Government's own witnesses, that this particular article imported by the defendants, however produced, would have been at once recognized in commerce as the commercial article known as waste, and so bought and sold. If this is true, it was dutiable as waste under the decisions above quoted. The defendants' witnesses all testified that the article was known as waste both before and after the statute, irrespective of the method of production. Their testimony has already been largely quoted, and will not be repeated.

To recapitulate, it is submitted:—

First.—The word "waste" in the Tariff Act referring to a commercial article, the question whether the article in suit was included in the definition of that article was a question of fact for the jury. This question depended not on the mere method of production of the article, but on its commercial

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* "A" was the sample of the importation in the present case.

† In the Tariff Act of October 1st, 1890, U. S. Statutes, vol. XXVI., page 567, paragraph 388, waste is divided into its various classes, and top waste, the article which the above witness declared identical with the imported article, is specifically mentioned and taxed as "top waste," the words of the Act being—

"On noils, shoddy, top waste, slubbing waste, roving waste, ring "waste, yarn waste, garnetted waste and all other wastes composed "wholly or in part of wool, the duty shall be thirty cents per pound."

classification and designation when produced. This question of fact should have been submitted to the jury.

Second.—The court in deciding the question of fact itself, based its decision upon a misconception of the testimony, and thus committed a double error.

Third.—The court also erred in ignoring the fact that if the article, although produced for the first time after the Act of 1883, was identical with an article produced in other modes before the Act of 1883, and was at once classified in commerce as that article, it was subject to the same rate of duty as if produced before the Act of 1883.

AS TO THE SECOND QUESTION VIZ., WHETHER THE ARTICLE IF NOT WASTE WAS A MANUFACTURE OF WOOL.

This question is raised by the second, eighth and eleventh assignments of error.

The charge of the court on this point was as follows :—

> Is it a "manufacture of wool," such as the term "manufacture" used in the statute contemplates? In the judgment of the court it is not. Without undertaking to define particularly what this term does embrace, is is sufficient to say that it does not include these torn fragments of "wool tops." It may be questioned, possibly, whether "tops" themselves are embraced; whether the term embraces anything short of a fabric virtually completed for use; but granted that it embraces "tops," it does not embrace their fragments when destroyed. Such fragments cannot, therefore, be said to constitute a "manufacture" within the meaning of the language as employed in the statute. It would be useless to enlarge on the subject.

With regard to this charge it is to be observed in the first place, that whether or not an article is a manufacture is ordinarily a question of fact for the jury dependent upon certain legal principles to be stated by the court. The test of a manufacture, as applied by this court in the case of

Hartranft *vs.* Wiegmann, 121 U. S., 609,

is not the nature of the labor put upon the article, whether constructive or destructive, nor the amount of the labor, but

whether the process to which one article had been subjected has changed it into a new article of commerce having a distinctive name or use.

This decision of the Supreme Court has been applied in the case of United States *vs.* Semmer, 41 Federal Reporter, 324, in which the court said :—

Fortunately we have a very clear definition of the word "manufacture" given us by the Supreme Court in a recent case. I refer to the case of Hartranft *vs.* Wiegmann, 121 U. S., 609, in which the court states that the mere fact of the application of labor to an article, either by hand or by mechanism, does not make the article necessarily a manufactured article, within the meaning of that term as used in the tariff laws, unless the application of such labor is carried to such an extent that the article suffers a species of transformation, and is changed into a new and different article, having a distinctive name, character or use. Of course, the tariff laws deal with the commerce of the country ; and in interpreting them we continually revert to the usages of trade and commerce, and constantly have upon the stand commercial men to enlighten us as to that trade and commerce. So this very distinction which the Supreme Court has pointed out is to be taken by you, and applied in a commercial sense ; that is, the labor bestowed upon the article is to be continued to such an extent as to transform it into a new and different article commercially, having a distinctive name in commerce, having a distinctive character commercially, or having a distinctive commercial use. It makes no difference whether you or I would have any particular use for the article as a different article from that from which it was made. The question is whether the trade and commerce of this country have a different use for the article, other and different from that which they have for the article out of which it was made. Take an illustration or two. From certain materials found in nature man gathers a proper proportion, and places them in a crucible or melting pot, and by the application of heat fuses them. The result of that fusion is a substance known as "glass." If the melting pot were taken off the fire after the fusion is completed, and allowed to cool, the solid lump which would be found in it, as the result of the chemical union of the constituents which were placed in it, would be the substance known as "glass"—crude glass—the crudest glass conceivable. It is a manufacture. The component materials are transformed into a new substance. Now that same glass may be, by the application of labor, transformed from the molten state, by a process of blowing and cutting, into an article which is known as cylinder or window glass, which is a manufacture of glass, because it is of a distinctive character, and has a distinctive name, and a distinctive use, from the crude glass out of which it was made. And so, by a different process of manufacture, this same crude

glass, when poured upon a table and pressed with a roller, becomes what is known in trade and commerce as rough or rolled cast plate glass. That also, is a manufacture of glass. That, also, has a use, character or name distinct from the use, character or name of the crude glass in the crucible out of which it was made. It also appears here, with regard to the polished plate glass, that by various processes, and by the application of a great deal of labor, this rough or rolled plate glass is eventually transformed into polished plate glass. It needs no witness to tell us that polished plate is a manufacture of glass within the definition of the Supreme Court.

The court below instead of instructing the jury as matter of law, that because the process employed was the destruction of an article and its conversion into fragments, it therefore could not be a manufacture, should have instructed the jury as to the principles above stated which govern the manufacture, and left it to the jury as a matter of fact whether this imported article was an article having a new and distinct name and use created by the destruction of another article of commerce having a different name and use. It must be, of course, conceded that if an article is manufactured from raw material and the process of manufacture is exactly reversed so as to reproduce the original raw material, the destructive process could hardly be called a new manufacture; but under the evidence, such was not the case here.

Wool tops were themselves commercial articles having a distinct name and use, and manufactured from wool. The breaking up of wool tops did not reverse the process of manufacture and produce the original wool, any more than the breaking up of a fabric into rags is a reversal of the process of manufacture. In each case the breaking up produces a new article of commerce. In the present case the resultant article was not wool, but as was testified to by the witnesses, a different article, commercially known as waste, which could not be used for the same purpose as wool, but could only be used as an adulterant of wool, and which therefore fell both commercially and naturally in the class of adulterants mentioned in paragraph 360, namely, shoddy, mungo, waste, flocks, &c.

In order that there may be no mistake as to the testimony on this point, reference is made to the evidence given on both sides, as follows:—

MR. KNOWLES, a witness called on behalf of the Government, testified (pages 27 and 28 of the Record):—

Q. All wool intended to be combed is first scoured, is it not?

A. I believe all wool nearly is. There is sometimes an exception to that, but not in Botany wool—not in fine wool. All fine wools are first scoured.

Q. Doesn't it then go through a process known as preparing?

A. Carding and preparing.

Q. Then it is put upon the comb?

A. Yes.

Q. When it comes off the comb is it not in long lengths known as slivers or slubbing?

A. Slivers in this district.

* * * * * * * * *

Q. Now is not the next process what is called gilling?

A. Yes.

* * * * * * * * *

Q. They are then taken into the finishing boxes?

A. They are taken into the drawing room and finished.

Q. At that point the sliver is made into round balls?

A. Yes.

Q. Wound together like a ball of worsted?

A. Yes.

* * * * * * * * *

Q. The tops, are they sold very often to the spinner?

A. Yes.

Q. And the spinner spins them into yarn?

A. Yes.

MR. RENTON, a witness called on behalf of the Government, testified (page 64 of the Record):—

Q. What sort of wool do you generally deal in in your private trade—in the trade of your firm?

A. We deal in all kinds of English wool, except, perhaps, lustre, and we deal in Botany, cross breds, and the finer merinos as well. Until three years ago we used to deal in tops and noils; that we gave up.

Q. Were you top makers?

A. Yes.

Q. In any considerable way?

A. Well, at times. We used to be guided by the times, you know.

Q. Did you buy, in addition to making tops to any considerable extent?

A. We did not buy tops to any considerable extent.

Q. I may take it that your trade experience of tops was confined to the tops that you made yourselves from wool that you bought in London?

A. Yes.

Q. And probably you made generally the same line of tops, did you not?

A. No, sir; we used to make what we call cross-bred tops, beginning at the quality of 36's and we went up to 70's in merinos.

MR. HOLZHAUSSEN, a witness called by the Government (page 70 of the Record), said:—

Q. The spinner receives the top in the shape of a ball, does he not?

A. Yes.

Q. The completed top?

A. The completed top.

MR. THEODORE JUSTICE, a witness called on behalf of the Government, testified (page 104 of the Record):—

Q. I call your attention to this top that the Government has here. This is a manufacture of wool, is it not?

A. Yes, sir.

Q. Advanced in a considerable stage of manufacture?

A. Yes, sir.

Q. And this is not the wool of commerce and would not be sold commercially as wool?

A. No, sir.

MR. THEODORE C. SEARCH, a witness called on behalf of the Government, testified (page 99 of the Record):—

Q. So that this article (tops) that you see before you is a manufacture of wool advanced in several stages of manufacture in the process of making worsted yarn?

A. Yes, sir.

Q. The article that you see before you (top) is the article tops broken up, is it not?

A. It looks so. I believe it to be so.

Q. That, of course, is not an article that you would give a commercial designation scoured wool (sample A); it has been scoured, but you would not buy it or sell it as scoured wool?

A. No; you would not buy it or sell it as scoured wool.

MITCHELL STEAD, a witness called on behalf of the Government, testified (page 109 of the Record) :—

Q. And this is, therefore, a manufacture of wool in a considerably advanced stage towards the process of making yarn?

A. Yes, sir.

MR. GEORGE W. PATTON, the defendant, testified (page 126 of the Record) :—

Q. Tell me what is the difference between that and a scoured wool that makes this difference in price?

A. The difference between the waste and the scoured wool is first, that the fibre of the waste has been destroyed in a measure by having had the noils and short fibre, together with the seeds and vegetable matter, combed out, and that had taken out a certain percentage of the felting fibre of the wool; and as wool fibre is worked from time to time, the fibre, no matter how delicately it may be worked, is injured to a greater or less extent. This waste having been once through a process of manufacture cannot successfully go through the same process again, as the scoured wool would do originally. The result is that the man, no matter whether he obtains this waste in the open market or by the incidents of manufacture, can only use a certain percentage of it back again in the original completed article, such as that on the table (top).

Q. How is waste always used?

A. It is always used as an adulterant.

MR. JAMES DOBSON, a witness called on behalf of the defendant, testified (page 135 of the Record) :—

Q. Please state whether that sample A is scoured wool?

A. Not commercially known as scoured wool; no, sir.

Q. Has there ever been a time when it has been commercially known as scoured wool?

A. Not to my knowledge.

Q. Is there a difference in price between the articles?

A. Yes, sir; scoured wool of the same quality will be worth from ten to fifteen cents per pound more than this will be.

Q. Is there a difference in the use of the article?

A. Yes, sir.

Q. Please state what it is.

A. Scoured wool, you will take that and you will go right through with it and it will make a worsted or make a piece of cloth with it. After it is broken top, in this state you cannot work it successfully alone on account of the noils that have been combed out of it; when it has been worked it lays flat and heavy, not springy, and consequently it is never worked to the same degree of fineness the second time it had been

worked that it did the first time, and to that extent it loses its value and is used as an adulterant with scoured wool.

Q. As I understand you, the first process of manufacture to which it has been subjected has destroyed some of its properties?

A. Yes, sir.

Q. And it has to be used as an adulterant with the scoured wool?

A. Yes, sir.

And the same witness (on page 139 of the Record) said:—

Q. Any practical manufacturer would take this and take it the same as he would an unwashed piece of wool, and it would be scoured, and it would be carded and combed; after that it would be gilled, and go back again on to the combing machines. In every process of this you will get additional noils—you will get from ten to twelve per cent. of noils out of this, no matter if it is the second time.

Mr. Truitt, a witness called on behalf of the defendant, testified (pages 142 and 143 of the Record):—

Q. Are you familiar with the article known in commerce as scoured wool?

A. Yes, sir.

Q. Look at the Patton importation before you (sample A) and say whether that is scoured wool or ever has been known as scoured wool?

A. It was scoured wool. It never was commercially known as scoured wool.

Q. When you say it was scoured wool you mean it has been made from scoured wool?

A. I say that waste was made out of scoured wool.

Q. Do you see any scoured wool there before you?

A. Yes, sir.

Q. What is the difference in the use of this sample A—this Patton importation, and scoured wool? What do you use top waste for?

A. I would use this to mix with scoured wool in the making of the same class of woolen yarn; that would be mixed with wool.

Q. It would be an adulterant?

A. Yes, sir.

Q. Which is the more valuable of the two? Do you know about what the market value of scoured wool and waste are?

A. Yes, sir; the wool out of which this was made would be worth today about eighty cents; seventy-eight to eighty cents; and the waste is worth about sixty to sixty-five cents; that class of waste * * *

By The District Attorney:

Q. What is the price of shoddy a pound?

A. That is a pretty broad term. What kind of shoddy?

Q. The ordinary shoddy that is dealt in.

A. Shoddy will vary from a cent and a half up to fifty or sixty cents a pound. Do you refer to garneted thread waste?

Q. Yes.

A. It is worth fifty-five cents, according to quality. It is worth from twenty-five to fifty cents.

Q. What is shoddy waste worth?

A. Shoddy is a term applied to any worsted yarn broken in the garnetter or rag picker. The highest price is fifty-five cents. The highest is all garneted—all thread waste.

Q. What is mungo?

A. That is a hard-woven woolen; woolen broken up in a rag picker, used to make the very fine shoddy used for broadcloth and used for many purposes. * * *

Q. What are flocks?

A. They are the result of the shearing process. It is the only kind of waste that cannot be used around a wool mill.

RUDOLPH C. BINDER, a witness called for the defendant, testified (page 147 of the Record):—

Q. Are you familiar with the article known as scoured wool?

A. Yes, sir.

Q. Is that scoured wool—is that its commercial designation (sample A)?

A. No, sir; that is not scoured wool.

Q. It has been made from scoured wool?

A. Yes, sir.

Q. Have you a sample there of scoured wool?

A. Yes, sir; that is scoured wool. (Defendants' exhibit.)

Q. What is about the relative value of the waste and scoured wool?

A. We sell most of our waste. It varies. Sometimes it brings very nearly the price of scoured wool and at other times considerably less, but it is always worth less than scoured wool.

Q. What is the use of that waste? What is it sold for and used for?

A. It is used for mixing with other wool?

Q. Why do you not use it by itself.

A. Because we prefer to use scoured wool. This article has been already considerably worked, and to use it over again would subject it to the same process and would deteriorate its value with use for worsted yarn.

Q. You use it as an adulterant, I understand?

A. Yes, sir; when we do use it.

Q. If you do use it and want to make worsted yarn out of it, what is the first thing you would do with it?

A. We would treat it the same as we do our other wool.

By THE COURT:—

Q. Would you scour it?

A. We would scour it; yes, sir.

Mr. CAMPBELL, a witness called on behalf of the defendant, testified (pages 162 and 163 of the Record):—

Q. You are familiar with the article known as scoured wool?
A. Oh, yes.
Q. Is that commercial scoured wool which you hold in your hands?
A. No, sir; this is top waste.
Q. How long have you known top waste composed wholly of pieces of tops?
A. Ever since I have been in the business.
A. Is that true both of domestic and foreign waste?
A. Yes, sir.
Q. Waste is sometimes, then, I presume, sold mixed up together and sometimes separated and classified?
A. Yes, sir; sold both ways.
Q. Tell me what the difference is between that and scoured wool as to its use?
A. Scoured wool is the original pure article. This has been worked over once.
Q. What would you do with that? How is waste of that kind used?
A. We take a small percentage and put it in every blend.
Q. Can you use it by itself to make worsted yarn?
A. The yarn would not be much good.

Mr. JAMES TATTERSFIELD, a witness called by the defendant, testified (page 166 of the Record):—

Q. There is such an article in commerce as scoured wool, is there not?
A. Yes, sir.
Q. You are familiar with that?
A. Yes, sir.
Q. Is that the article (sample A)—is that scoured wool?
A. No, sir.

It will be seen by this testimony that whether or not this article fell within the commercial designation of waste, and whether as an article of commerce it existed before the Act of 1883, it was a distinct article, which having been produced from scoured wool by first, a process of constructive manufacture into tops and then a process of destructive manufacture into waste, had acquired a distinct name, a distinct character, and a distinct use from the original wool which formed the basis of the manufacturing operations. It is impossible to escape from this conclusion. The whole case is summed up in the question and answer already quoted, upon

the examination of the Government's own witness, Mr. Justice (page 104 of the Record):—

Q. And this is not the wool of commerce and would not be sold commercially as wool?
A. No, sir.

And the answer of Mr. Richards, another Government witness (page 43 of the Record):—

Q. Whatever this may once have been, having been broken up and being in this form, does it then become waste in every sense of the term?
A. Yes; that is so.

The article imported was not the wool of commerce. It could not be sold as wool; it could not be used as wool. It could be used only as an adulterant. It fell within the class of adulterants in paragraph 360, viz., shoddy, mungo, waste and flocks. If, therefore, the court had submitted to the jury the question whether it was or was not commercially known as waste, and the jury had decided against the importer on that ground, it would still have been the duty of the court to have submitted the case to the jury upon the question whether or not the imported article was wool, or was an article made from wool, having a distinct name, character and use, and on such an issue the verdict must have been for the importer upon the evidence of the witnesses on both sides. If the article was a manufacture of wool, the Goverment could not recover the triple duty imposed upon this article as wool.

To recapitulate, the test applied by the court was not the proper test of a manufacture, and what the court did on this head was, practically, to dispose of a question of fact by a binding instruction based upon an erroneous principle of law. Of course, what has been said on this head is said subject to the argument upon the first question in this brief. The appellant contends that the article in question was waste, and was commercially known as such, but if it should be held that because it had been produced by a method not known prior to the Act of 1883 it was therefore not the waste specifically mentioned in that Act, it would still inevitably follow that being an article commercially distinct from wool, and having a distinct commercial name, character and use, and being the

result of a manufacture, it would be dutiable under paragraph 361 as a manufacture of wool not specially enumerated or provided for.

AS TO THE THIRD QUESTION, VIZ., WHETHER THE IMPORTED ARTICLE WAS WOOL WHICH HAD BEEN SCOURED AND AFTERWARDS CHANGED IN ITS CONDITION FROM THAT IN WHICH SUCH WOOL WAS CUSTOMARILY IMPORTED IN MARCH, 1883.

This question is raised by the third, sixth and seventh assignments of error.

As to this point, the charge of the court was as follows (Record, page 172):—

> We come now to the third of defendants' allegations: that the article is not "scoured wool." It seems clear from the testimony that it is not what is commercially so designated; but the language of the statute, which refers to wool imported, scoured, in some other than the ordinary condition in which such wools are commonly imported, does not, and is not intended to describe what is commercially designated "scoured wool." The change worked upon it to produce the new condition at once distinguishes it. It is no longer in the condition to which the term, commercially used, applies. If it came in the condition of what is commercially known as scoured wool it necessarily would not fall within the provision imposing a double duty. Congress contemplated that such wool might be changed by additional work or manipulation and thus brought here in other than the ordinary condition in which it is customarily brought, and therefore imposed the penalty of a double duty where this is done. If, therefore, this wool was imported scoured and in a condition other than that in which such wool was customarily imported in March, 1883, and previously, it fell within the provisions referred to, and the duty assessed is right.

The vice of this charge lies in the assumption that if the commercial article, wool, with which the tariff dealt, was changed into some other commercial article, it nevertheless was liable to the double duty imposed as a penalty for an attempt to mislead the revenue officers. This theory will not bear the test of examination. The commercial article known as wool was, for purposes of duty, divided in the Tariff Act into three classes, based upon the blood or breeding of the sheep producing the wool. It is quite manifest that by a mixing of the wool, or by applications intended to disguise

the characteristics of blood, or render it difficult to distinguish those characteristics, the task of the revenue officers in classifying the particular importation might be rendered very difficult. It was, presumably, in order to avoid such difficulty that the Act provided that if the wool was imported in any other than the ordinary condition, or that if it should be changed in its character or condition for the purpose of evading the duty, a penalty of a double duty should be imposed. By this clause Congress did not mean that if the wool was manufactured into something else which would be under the Act subject to a different rate of duty; or if the intent was to convert the wool into a different commercial article, dutiable under another clause of the Tariff Act, that a penalty should be imposed. The fact is, as was testified to by the Government's own witnesses, whose testimony has been quoted at large under the last question discussed, that the article imported was not wool at all commercially. It was not wool the condition of which had been changed for the purpose of bringing it in as one class of wool and selling it for another, or bringing it in disguised as some other article and selling it as wool; but it had been converted into an article having a distinctive name, character and use as an adulterant, and was imported as such new article for the purpose of selling it as such new article. It will be observed that the court in its charge states that the testimony is clear that it was no longer commercial wool, but charged that the very fact that it was no longer commercial wool was conclusive evidence that its condition had been changed, and that it was brought here in other than the ordinary condition. The effect of this would be that no other article of commerce could be made out of wool and imported without subjecting the importation to the double duty. The only possible argument which could sustain the charge of the court below on this point, is that it is a fraud to change one article of commerce into another, because the other article can be brought in under a less rate of duty. Such a position, however, is as contrary to authority as it is unfounded in principle.

In the case of

Seeberger *vs.* Farwell, 139 U. S., 608,

this court sustained to the fullest extent the right of the importer to change his goods into a form which brought them within a lower rate of duty than that to which they would otherwise have been subjected. In that case a very small amount of cotton, not sufficient to affect materially the character of the goods, was introduced solely for the purpose of changing the classification, and the court held, that provided the effect of the change was to bring the goods within the language of the clause imposing the lower duty, the intent of the importer was not material.

The language of the opinion (delivered by Mr. Justice Blatchford) was as follows:—

> The court, in its opinion, said that the Collector in classifying the goods evidently assumed that the purpose of mixing the cotton with the wool was to secure a low classification, and assumed, also, that so small a quantity of cotton would not materially change the character of the goods as merchandise when offered for sale to consumers, and therefore looked upon the contention of the plaintiff for a lower classification as an attempt to defraud the revenue, and accordingly imposed the higher duty; that Congress having made special provision for a lower rate of duty upon goods when composed in part of wool, without naming how much of other material should enter into their composition in order to secure such lower rate of duty, the court was of opinion that manufacturers and importers had the right to adjust themselves to the foregoing clause of the tariff and to manufacture the goods with only a small percentage of cotton for the purpose of making them dutiable at the lower rate; that although the goods in question contained so small an amount of cotton that the ordinary dealer in them and the ordinary examiner would not detect the cotton without a close and careful examination, that did not change the legal right of the plaintiffs to bring their goods within the operation of the clause involved by the admixture of even a small percentage of cotton if they could do so; and that goods made of ninety-four per cent. in bulk of wool and six per cent. in bulk of cotton fairly came within the description of goods composed in part of wool. We concur in this view and the judgment is affirmed.

This decision has been followed by the Court of Appeals of the Second Circuit in the case of

In re Van Blankensteyn, 56 Fed. Rep., 474.

In that case certain bolting cloths were imported in narrower widths for decorative purposes. The court held that the fact that they had not been manufactured in narrower widths prior to the Act of 1883, and that they were in such

widths capable of being used for other purposes than that for which bolting cloths were used prior to the statute, did not affect the question, and that if they fell within the commercial classification of bolting cloths they were liable to duty as such, irrespective of the purpose or intent of the importer.

Indeed, no other conclusion is possible. The Tariff Act imposes various duties on various articles. There can be no such thing as a fraud on the Act. As was said by Judge Lacombe, in—

In re Blumenthal, 51 Fed. Rep., 76,

following the decision of this court in Seeberger *vs.* Farwell, already quoted—

> It was and is the right of the importer, if he so chooses, to put his goods into such a condition for importation here as will enable him to get them in at the lower rate.

If the importer imports wool, he must pay the duty on wool. If he can convert it into an article commercially known as waste, and waste has a special duty in the Tariff Act, he must pay the duty on waste. If he converts it into something which is neither wool nor waste, he must pay the duty on the article as a manufacture of wool. It is true that if he imports wool in a condition to deceive the revenue officers, but which, notwithstanding its changed condition, is really wool having the same commercial character, but having that character disguised, he is liable to a penalty; but if he has changed the article into something which is not wool at all commercially, but has a distinctive commercial name, character and use, he is entitled to bring it under the duty imposed upon it in this new character. Whether or not he did so in this case would be a question of fact, not of law; but the court charged that as matter of law, if the condition of the wool had been so changed that it had lost its commercial designation of wool, the Government was entitled to recover, thus adjudicating the question as a question of law, and adjudicating it, as has been argued, upon an erroneous principle.

In making the foregoing argument it has not been overlooked that the jury found specially that the tops which were

broken into fragments, were so broken for the purpose of changing the condition of the wool from tops into the fragments resembling waste for the purpose of evading the duty to which the wool in the form of tops would be subjected; but in view of the charge of the court, the jury could have made no other finding. The court had charged them as matter of law that they must find that the particular article was not waste; that they must find that the particular article was not a manufacture of wool, and that they must find that the particular article was wool which had been scoured and the condition of which had been changed from its ordinary condition. If these facts were all so, there was really nothing for them to try, nor could there have been any purpose in breaking up the merchandise, except the one possible purpose of evading the duty. If what was done to the wool did not change its commercial character, did not manufacture it into anything else, but only changed its condition, then it inevitably followed that as the plaintiff had claimed a lower rate of duty than was imposed on scoured wool, and as he evidently intended to avail himself of the lower rate of duty, the change in the condition of the wool must have been for the purpose of obtaining the lower duty. The fact is, that this special finding became wholly unnecessary in view of the binding instruction given by the court, and that the court did not consider it material is quite evident, since the special finding related only to an intent to evade the duty on tops, and the court in its charge expressly avoided deciding the question whether tops were a manufacture of wool which were dutiable under paragraph 361 as such a manufacture. The special finding, therefore, really has no bearing upon this case. If the other questions of fact had been left by the court to the jury, this special finding might have aided in the decision of the cause; but with the binding direction to find for the Government, ignoring the questions of fact, the special finding is of little use.

Even if the goods were changed into waste for the purpose of evading the duty on tops, that would not subject the importer to a penalty, providing the fragments resulting from the

breaking formed a new article of commerce subjected to another duty under the Tariff Act. In other words, the importer has a right to evade the duty on one class of merchandise by changing it into another class of merchandise subject to another duty.

But one other assignment of error remains to be noticed, viz., the fifth. This relates to the charge of the court that the decision of the customs officers not only determined, *prima facie*, that the wool imported was in other than the condition in which such wool was imported in 1883 and before, but also that it was changed from one condition to another for the purpose of avoiding duty. This point is not material, except as affecting the special finding of the jury, and if, as has been argued, that finding, in view of the binding instructions of the court, is itself immaterial to the questions now raised, it is not necessary to consume time in the discussion of this assignment of error. It may, however, be briefly said that while it is true that the decision of the customs officers as to classification or value is *prima facie* correct, this presumption ought not to extend to an imposition of a penalty for fraud. In the present case the imposition of the double duty was a penalty for evasion of the revenue laws, and is so alluded to in the charge of the court. In such case the presumption of correct official action is met by the counter presumption against fraud and the Government should sustain its claim by proof.

To sum up the argument in this brief it is—

First.—That the question whether the article was "waste" was a question of fact as to which there was evidence sufficient to submit to a jury.

Second.—That the first test of classification was commercial designation, and that this also was a question of fact for the jury, under proper instructions from the court.

Third.—That if because of the employment of a new method of production, the article was to be held not included in the term waste as used in the Act of 1883, there was sufficient evidence to submit to the jury on the question whether it was not a manufactured article having a name, character and use, distinct from the wool of commerce.

Fourth.—That if the court below was right in deciding the foregoing questions as matter of law and not of fact, it decided them on erroneous principles.

Fifth.—That upon the testimony of the Government's own witnesses the article was not scoured wool, and the court should have directed a verdict for defendant or at least should have left the case on this point as a question of fact for the jury.

FRANK P. PRICHARD,
JOHN G. JOHNSON,
For Plaintiffs in Error.

Office Supreme Court, U. S.
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CASE No. 14741.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE W. PATTON ET AL., plaintiffs in error,
v.
THE UNITED STATES.
No. 36.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR DEFENDANT IN ERROR.

In the Supreme Court of the United States.

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GEORGE W. PATTON ET AL., plaintiffs in error, v. THE UNITED STATES. No. 36.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR DEFENDANT IN ERROR.

This was an action brought by the United States against the members of the importing house of George W. Patton & Co. to recover a balance of duties upon goods imported.

The importations were made in 1888 and 1889, so that the case is governed by the provisions of the tariff act of 1883. It was tried before Judge Butler and a jury in May, 1891, and a verdict rendered for the Government The defendants below are plaintiffs in error here.

The goods were invoiced as "wool waste." The duties collected thereon at the time of importation were accord-

ingly collected at the rate of 10 cents per pound, under paragraph 361 of the tariff act of 1883, which is as follows:

> Woolen rags, shoddy, mungo, waste and flocks, 10 cents per pound.

The appraiser subsequently returned the goods as "scoured wool, broken tops, class 1, costing under 30 cents a pound in the unwashed condition, 60 cents per pound" (p. 13), and the collector accordingly liquidated the duty at 60 cents per pound under the following paragraphs of the act:

> 352. All wools * * * shall be divided for the purpose of fixing the duties to be charged thereon into the three following classes:
>
> 353. Class 1, clothing wools—that is to say, merino * * * wools, etc.
>
> 356. * * * The duty on wools of all classes which shall be imported *scoured* shall be three times the duty to which they would be subjected if imported unwashed.
>
> The duty upon wool * * * which shall be *imported in any other than ordinary condition as now and heretofore practiced*, or which shall be *changed in its character or condition for the purpose of evading the duty* * * * shall be twice the duty to which it would be otherwise subject.
>
> 357. Wools of the first class, the value whereof at the last port or place whence exported to the United States, excluding charges in such port, shall be 30 cents or less per pound, 10 cents per pound.

It does not appear from the record whether the bill of exceptions contains a full account of all the evidence produced at the trial. If it did contain the evidence in full,

then the plaintiffs in error failed to prove that they protested, as required by § 2931 of the Revised Statutes. (*Westray* v. *United States*, 18 Wall., 322, 329.) On the trial plaintiffs in error urged that their goods, if not properly dutiable as "waste," came within the following paragraph of the act:

> 362. Woolen cloths, woolen shawls, and all *manufactures of wool* of every description, made wholly or in part of wool, not specially enumerated or provided for in this act, valued at not exceeding 80 cents per pound, 35 cents per pound and 35 per centum ad valorem. * * *

It is claimed by plaintiffs in error in their brief that the learned trial judge in effect, if not in form, directed the jury to find a verdict for the United States. He did also, however, separately submit to the jury a specific question of fact, namely (p. 172):

> Whether the tops which were broken into fragments constituting this importation were so broken for the purpose of changing the condition of the wool from tops into the fragments resembling waste for the purpose of evading the duty to which the wool in the form of tops would be subjected on importation to this country or evading duty to which the importer believed the tops would be liable.

This question was submitted in accordance with a written stipulation of the parties (p. 8).

It may be noted that, if the goods were dutiable as manufactures of wool, the sum to be paid by the importer would have been much larger than a duty upon them simply as scoured wool of the first class. The doubling of the latter duty, however, in accordance with the second

half of paragraph 356, was assumed to have raised the amount payable considerably above what would have been the duty upon a manufacture of wool.

STATEMENT OF FACTS.

The importations in question consisted of wool which had been scoured and then put through various processes which formed it into certain round balls (p. 26) called "tops," which "tops" had been subsequently pulled to pieces again. The process of making tops is described at pages 27 and 28 by one of the Government witnesses upon cross-examination. It is succinctly described by plaintiffs in error in their brief heretofore filed as follows:

> In the first place, it is scoured. It is then carded and prepared; it is then put upon a comb from which it comes in long lengths, known as slivers or slubbing. It is then put through a process called gilling, which forms the slivers into a less number of slivers of greater thickness. These slivers are then taken into the drawing room and finished, and come out of the drawing room in the form of round balls called "tops."

The court in its charge says (p. 171):

> The importation in question, though called "wool waste," seems to be so called only because of its resemblance to what was formerly known by this designation. It does not consist of refuse or broken particles thrown off in the process of manufacture, as before described, but is made intentionally by tearing up what are called "wool tops," which consist, as you have seen, of wool which has been put through several processes and prepared for spinning.

It was uncontradicted at the trial that until within a short time before the importations in question the deliberate breaking up of "tops" for the sole purpose of selling the product was unknown, or at least extremely rare. "Tops" were sometimes deliberately broken up because they were not in condition to sell, from decay, discoloration, or otherwise. In that case the "tops" were sold for the same purposes as wool waste. It is not claimed, however, that they formed a recognized article of commerce in this country or to any marked extent in Great Britain. Wool waste in general did not form in this country an article of sufficient importance in commerce to have a market quotation in 1883 (p. 127).

The deliberate breaking up of "tops" for commercial purposes began about 1887 or 1888 (pp. 34, 45, 62–63, 86, 98, 101, 110, 112, 117, 118, 122, 141, 142, 145, 146, 148, 151, 167). It was commenced in Great Britain for purposes of exportation (pp. 34, 42, 68, 78), and especially with a view to the American market, on account of the American customs laws (p. 75). It is not shown that there was a single importation of this character prior to 1887. Plaintiffs claimed that they had made one importation in 1881 or 1882 (p. 123), but were unable to state positively that that importation consisted of "tops" deliberately broken up (pp. 131, 132). The sudden increase in the importation of these broken tops when their possibilities as a means of evading the American customs laws were discovered is shown by the figures given by Mr. Nicholls, chief clerk of the United States consulate at Bradford, in Yorkshire (pp. 57, 58). He

shows the following extraordinary increase in importation of wool waste from the season of 1887–88 to the season of 1888–89:

Month.	1887–88.	1888–89.
November	69,648	334,168
December	16,995	407,776
January	54,114	530,416
February	49,331	531,198
Total for four months	190,088	1,803,558

The wool contained in the broken tops is claimed by defendant's witnesses (and must therefore here be conceded) not to be as valuable as scoured wool which has not gone through all of these processes. It is, however, valuable for use as an adulterant (pp. 127, 135, 143, 147, 168); and it is used precisely like other scoured wool, being, in fact, mixed with it in the carding machine (pp. 129, 130, 160, 162). It is worth only 10 or 15 cents per pound less than scoured wool of the same character (p. 135), and hence, in view of the differences of tariff rates, is an article much more valuable than scoured wool for purposes of importation. In fact, neither scoured wool (pp. 125, 130, 131), nor wool in the form of "tops" Syn. Dec. 4777, 7217; *Juillard* v. *Magone*, 37 Fed. Rep., 857, 860) cuts any figure at all as an importation. The tariff rates may also have contributed to the following singular result: That while broken tops became a large article of importation under the invoice designation of "wool waste," they seem never to have been prepared in this country for purposes of sale (pp. 152, 153, 161). The "tops" here are very much more valuable in the unbroken condition (p. 136), while abroad in 1888 the

broken tops were more valuable than the unbroken ones (pp. 25, 91, 92).

This artificial kind of "waste" is, for obvious reasons, more uniform and clean and therefore more valuable than genuine waste, according to the witnesses on both sides (pp. 31, 48, 49, 121, 149, 150, 155, 157). One of the importer's witnesses did, indeed, state that there was no difference in appearance or value between intentional and accidental broken tops or top waste (p. 137). He showed on cross-examination, however, that he had no knowledge of the subject, and had never heard of the intentional variety until the trial (pp. 140, 141).

A curious phase of the English market in 1889, when the broken tops were worth a penny more than the unbroken tops, was regarded by one of the English dealers as quite naturally due to "the demand for 'laps' from the United States" (p. 92).

That the importations in question consisted of "tops" deliberately broken up for purposes of sale was clearly proved (pp. 20, 25, 26, 32), and not disputed. Mr. Knowles, of Bradford, who sold the articles in suit to the exporter, testified that the price of the "top" was from $22\frac{3}{4}$ to $23\frac{1}{4}$ pence, and that he sold it to the exporter for $23\frac{1}{2}$ pence, the additional price representing the cost of breaking it up and his profit on the transaction.

QUESTIONS PRESENTED.

Judge Butler, in directing or favoring a verdict for the plaintiff, committed himself to the following propositions:

I. That the word "waste" in paragraph 360 of the tariff act, apart from any evidence of commercial designation,

did not include wool obtained by deliberately breaking up "tops" in the method described by the witnesses.

II. That either there was no evidence of commercial designation sufficient to require the submission of that question to the jury, or the word in question as used in paragraph 360 is not subject to be altered by evidence of that nature.

III. That broken "tops" are not a manufacture of wool within the meaning of paragraph 361.

IV. Either that the wool was imported in some other than the ordinary condition, as practiced in and before 1883, or that it had been changed in character or conditions for the purpose of evading the duty. In fact, it clearly appears, from the language of the court at page 172, that his instruction "that the plaintiff is entitled to recover the amount of the claim" was based on the former of these alternative propositions.

For greater caution, however, and in pursuance of a stipulation of the parties, the court asked the jury for a special finding upon the latter proposition; and the finding thus obtained was also in favor of the United States. It is clear, therefore, that the judgment must stand if the court's ruling upon the first proposition was correct, whether or not there may have been error in instructions to the jury bearing upon the second proposition; while, on the other hand, if there is no error in submitting the latter to the jury, it is immaterial whether or not there was error in the ruling of the court upon the first proposition.

We shall take up these propositions in their order; showing also, under the first heading, that it is entirely immaterial whether or not these articles are "waste."

ARGUMENT.

I.

The word "waste" does not include articles deliberately prepared in the manner described by these witnesses.

Under this heading we consider the ordinary definition of the word without reference to the question of "commercial designation," which will be considered under our next heading.

(*a*) The ordinary definition of the noun "waste," as used in this connection, is given as follows by the Century Dictionary:

> 6. Broken, spoiled, useless, or superfluous material; stuff that is left over, or that is unfitted, or can not readily be utilized for the purpose for which it was intended; overplus, useless or rejected material; refuse, as the overflow water from a dam or reservoir; broken or spoiled castings in a foundry; paper scraps in a printing office or bindery; *or shreds of yarn in a cotton or woolen mill.*

The noun is derived from words meaning devastation or desert, and the eleven other uses of the word as set forth in the dictionary are all confirmatory of the proposition that it refers not to an article deliberately made in order to serve some useful purpose, but to an article which, so far as it is a useful product of manufacture, must be classified as a by-product.

(*b*) That the word "waste" is used in the statute in its ordinary English meaning is further confirmed by the use of the rule *noscitur a sociis*. We give the following

definitions, also from the Century Dictionary, of the similar articles grouped with it in the same section of the statute:

> *Shoddy.*—A woolen material felted together, composed of old woolen cloth torn into shreds, the rejected threads from the weaving of finer cloths, and the like.
>
> *Mungo.*—Artificial short-staple wool formed by tearing to pieces and disintegrating old woolen fabrics, as old clothes.
>
> *Flock.*—2. Finely powdered wool or cloth, used when colored for making flock paper, and also formerly as shoddy.
>
> 3. Refuse of wool or the shearings of woolen goods or old cloth or rags torn or broken up by the machine called the devil, used for stuffing mattresses, upholstering furniture, etc.

(*c*) It must be borne in mind, moreover, that if the question of evasion was properly submitted to the jury, their finding thereon makes it immaterial whether the article in question is "waste" or not; for the provisions of paragraph 355 of the act of 1883 (which provisions come down from the Morrill tariff of March 2, 1861), are evidently drawn with the express purpose of preventing all evasions of the wool duties, even if such evasions should be made by artificially bringing the articles intended for use as wool into some classification whereby, were it not for the peculiar provisions of this paragraph, a lower rate of duty would be payable. Wool, therefore, is safe from such attacks as proved successful in *Merritt* v. *Welsh* (104 U. S., 694, 701) and *Seeberger* v. *Farwell* (139 U. S., 608, 611).

II.

There is no evidence of commercial designation which would warrant sending this case to the jury for a finding upon that question.

It is an elementary rule that the circuit court may and should direct a verdict for plaintiff upon the evidence where it is clear that he is entitled to a recovery; or where, in other words, the evidence is so conclusive that the court would set aside a verdict returned for the other party. (*Pleasants v. Fant, 22 Wall, 116; Herbert v. Butler, 97 U. S., 319; North Pennsylvania R. R. Co.* v. *Commercial Bank*, 123 U. S., 727; *Robertson v. Edelhoff, 132 U. S., 614, 626; Delaware R. R. Co.* v. *Converse*, 139 U. S., 469; *Goodlett* v. *Louisville R. R.*, 122 U. S., 391; *Gunther* v. *Liverpool Insurance Co.*, 134 U. S., 110; *Elliott* v. *Chicago, etc., R. R. Co.*, 150 U. S., 245.)

It is also well settled that in the absence of evidence of commercial or other technical usage, words in the tariff act are to be given their "ordinary and commonly accepted sense," of which the court takes judicial notice (*Saltonstall* v. *Wiebusch*, 156 U. S., 601, and cases cited; *Marvel* v. *Merritt*, 116 U. S., 11); and that the burden of proof is on the importer (*Arthur* v. *Unkart*, 96 U. S., 118; *Herrman* v. *Robertson*, 152 U. S., 521, 523; *Erhardt* v. *Schroeder*, 155 U. S., 124).

Before taking up the evidence relating to the issue of commercial designation, we are met by the question whether the word "waste," used as it is used in the tariff act, can be by any evidence whatever so distorted in meaning as to apply to articles which are not by-products.

We respectfully submit that this question should be answered in the negative, and that a comparison of the various paragraphs above quoted from Schedule K of the tariff of 1883 shows that "wool," in every stage of manufacture up to the time when it reaches the status of a manufactured article, is a term carefully protected from invasion from any direction whatever, and that, whatever its title to rank as a "manufacture of wool," it can certainly not at the same time be "waste." (Compare *Seeberger* v. *Castro*, 153 U. S., 32, 35.)

This court has frequently had occasion to reaffirm the proposition that no commercial designation or other technical phraseology can prevail when Congress has "clearly manifested a contrary intention." (*Cadwalader* v. *Zeh*, 151 U. S., 171, 176; see also *Maillard* v. *Lawrence*, 1 Blatch., 504; 16 How., 251; *Barber* v. *Schell*, 107 U. S., 617, 621; *Newman* v. *Arthur*, 109 U. S., 132; *Schmieder* v. *Barney*, 113 U. S., 645; *Marcel* v. *Merritt*, 116 U. S., 11; *Magone* v. *Luckemeyer*, 139 U. S., 612, 614; *Smith* v. *Townsend*, 148 U. S., 490, 499, 500; *Hartranft* v. *Meyer*, 149 U. S., 544, 548; *Magone* v. *Heller*, 150 U. S., 70, 73-4; *Berbecker* v. *Robertson*, 152 U. S., 373, 376.)

It is also to be borne in mind that commercial usages in England are of no value in determining the meaning of language in our statutory legislation. Congress is not presumed to be familiar with any foreign custom or dialect. (*Elliott* v. *Swartwout*, 10 Pet., 137, 151.)

Barlow v. U.S. 7 Pet. at p. 410

It is also to be borne in mind that the usage referred to by the witnesses must be something more than a mere local usage in Philadelphia (for Congress can not be expected to know the local trade dialect of each separate

port in the Union), but that it must be uniform, general, and definite.

We quote as follows from the case of *Maddock* v. *Magone* (152 U. S., 368, 371, 372):

> The inquiry was whether, in a commercial sense, the articles were so known, trafficked in, and used under the denomination of toys, that Congress, in the use of the particular word, should be presumed to have had that designation in mind as covering such articles.
>
> Necessarily the commercial designation is the result of established usage in commerce and trade, and such usage, to affect a general enactment, must be definite, *uniform*, and *general*, and not partial, *local*, or *personal*. * * *
>
> Recovery could not be had on a theory involving different rates of duty at different ports of entry, or distinct and differing designations.
>
> * * * * *
>
> If it were admitted that their signification as toys was confined to a particular locality or to a particular class, as, for instance, to those who imported them (in which case there might be danger that the designation would vary with the rates), and not to those who dealt in them, and that a different meaning obtained elsewhere or among the latter, then the usage relied on would fail to be made out.

In *Berbecker* v. *Robertson* (152 U. S., 373, 376), the court, speaking again by the Chief Justice, repeated the statement that "the usage from which it may be inferred that Congress intended to use particular words in a particular sense in a tariff act must be definite, uniform, and general." These authorities merely apply well-settled principles governing all usages; that they must be uni-

form, definite and certain, and that if the evidence falls short of this the case must not be submitted to the jury. (Endlich on Interpretation of Statutes, § 362; *Dickinson* v. *City of Poughkeepsie*, 75 N. Y., 65, 77; *Greenwich Ins. Co.* v. *Waterman*, 54 Fed. Rep., 839; *Garrison* v. *Memphis Ins. Co.*, 19 How., 312, 317; *Rapp* v. *Palmer*, 3 Watts, 178; *Collings & Co.* v. *Hope*, 3 Wash., C. C., 149; *Foge* v. *Leighton*, 22 N. H., 71, 76, and cas. cit.; *Butler* v. *City of Charlestown*, 7 Gray, 12, 16; *Citizens' Bank* v. *Grafflin*, 31 Md., 507, 520; *Bowling* v. *Harrison*, 6 How., 248; *United States* v. *Buchanan*, 8 How., 83, 102; *Adams* v. *Pittsburg Ins. Co.*, 76 Pa. St., 411; *Schurr* v. *Savigny*, 85 Mich., 144.)

It is further to be borne in mind that the usage must be at least as ancient as the date of the act whose construction it is to modify. Plaintiffs in error rely largely, in opposing this proposition, on the case of *Pickhardt* v. *Merritt* (132 U. S., 252), where it is said by Mr. Justice Blatchford that the phrase "aniline dyes and colors," as used in the Revised Statutes, was applicable to dyes and colors which were not aniline in fact, and which were not known in 1874 when the Revised Statutes were enacted; provided that thereafter, when they had become known, they were baptized with the name "aniline" by the persons who dealt in them. This portion of the decision in the Pickhardt case, however, has been overruled by this court in *Cadwalader* v. *Zeh* (151 U. S., 171, 179). In that case (argued by the present counsel) it was urged on behalf of the Government that certain testimony bearing upon the issue of commercial designation was competent, and that its exclusion by the trial court was

therefore error. The testimony under consideration related to commercial usages in 1888 or thereafter, while the act under consideration was this same act of 1883. This court, speaking by Mr. Justice Gray, said:

> This testimony was rightly excluded. Upon the question of the ordinary meaning of the word "toys" it was irrelevant. If such testimony could have been competent under any circumstances to prove a commercial meaning (which we do not intimate), it certainly had no tendency to prove what that meaning was at the time of the passage of the act of 1883.

It is respectfully submitted that an examination of the authorities clearly shows that this, and not the Pickhardt case, correctly states the law as to the date to which testimony concerning commercial designation must be directed. (*Curtis* v. *Martin*, 3 How., 106, 110; *Rossman* v. *Hedden*, 145 U. S., 561, 570.)

It is further respectfully submitted that the contrary rule would lead to absurd results. Upon the discovery or first introduction into this country of any new article of commerce the importers would then be permitted to select out of the free list in the tariff act such designation as they might prefer; and this designation, thus adopted by them, would then entitle them to introduce their new articles free of duty.

The other case cited by the learned counsel for plaintiffs in error (*Newman* v. *Arthur*, 109 U. S., 132) does not support his contention. It merely holds that, as stated by Mr. Justice Matthews, "the fact that at the date of the passage of the act goods of the kind in question had not been manufactured, can not withdraw them

from the class to which they belong as described in the statute, where, as in the present case, the language fairly and clearly includes them." Plaintiffs' attempted adaptation of this language is indeed based on remarks of Mr. Justice Blatchford in the Pickhardt case; but it is submitted that these remarks can not be supported by any just reasoning, as applicable at any rate to the present case. In using such a term as "manufactures of cotton" (the term used in the Newman case), Congress very clearly refers to all manufactures of cotton which may be imported at any time during the life of the tariff act in which it is formulated. That is the plain intent of Congress; and it therefore is the construction plainly to be given to the statute. Does it follow that when Congress uses a word with a plain and well-understood meaning, that word subsequently should be extended to new articles which were not within its meaning, simply because commercial men subsequently by usage assume to change the meaning of the word? The Newman case rests on the principle that words used by Congress in framing the statutes must continue with unaltered definition until the statutes are repealed. The Pickhardt case lays down the rule that words thus used by Congress are subject to "alteration, amendment, or repeal" from time to time, without the sanction of Congress, by agreement among the tradesmen of the country. In view of the Zeh case, however, it seems unnecessary to pursue this discussion further.

Evidence of commercial designation must therefore relate to a period at least as far back as March, 1883. Is that, however, far enough back? The word "waste,"

in connection with the word "shoddy," is of more than fifty years' standing in our tariff legislation. It was introduced by the act of August 30, 1842, § 7 (5 Stat., 557), and was preserved in the act of July 30, 1846, Schedule H (9 Stat., 49). It was continued by the Morrill tariff of 1861 and by every subsequent act down to the one now under consideration. It is presumed that Congress, in reenacting any statutory provision, intends to continue to use it in the same meaning as before. If a "special meaning were attached to certain words in a prior tariff act, it would be presumed that Congress intended that they should have the same signification when used in a subsequent act in relation to the same subject-matter," although "this presumption is not conclusive." (*Maddock* v. *Magone*, 152 U. S., 368, 371, 372, citing *Reiche* v. *Smythe*, 13 Wall., 162.) The presumption of continuity was held to govern the commercial designation in two early cases. (*Roosevelt* v. *Maxwell*, 3 Blatch., 391, 395; *De Forest* v. *Lawrence*, 13 How., 274, 282.)

Whether or not, therefore, a commercial designation dating, say, from 1881 or 1882 can be considered at all as affecting the construction of a term which has descended unchanged from act to act through 1842, 1846, 1861, 1864, 1867, and 1874, it is submitted that there must be at least a strong case made before Congress can be presumed to have altered the spirit, while it preserved the letter, of the ancient phraseology.

With these preliminary remarks, we now proceed to examine the imposing array of quotations from the evi-

dence which counsel for plaintiffs in error present in their brief "in order that there may be no controversy over this part of the case."

Joseph Knowles, a Government witness, was a Yorkshire merchant, testifying only as to the technical terms used "in the district of Bradford" (p. 27). The word "here," at page 30, refers to that city, where the deposition was taken in 1890 (p. 18). It does not appear from his deposition that he was referring to a usage as old as 1883 (p. 33).

George W. Lupton, a Government witness, was a merchant at Saltaire, in England, and doubtless also was testifying as to English practice. He had not, in 1890, heard of the article in question "more than two or three years—not to speak of it in any quantity. * * * I have not come across it myself personally, unless in a very exceptional case, prior to that time" (p. 45). "I had hardly ever come across it previous to that. It was a very, very rare, exceptional case" (p. 47). He testifies that he "should be inclined to call it waste" because "it is now only useful—practically useful—for the same purpose as laps" (p. 49). He had heard it designated, *probably*, under three heads—as laps, as waste, and as broken tops" (p. 46). Tops which are broken up because they have become rotten, discolored, or otherwise "would not be sold as anything except under the designation of laps or waste" (p. 50). Those which he had sold he could not state the invoice name of (p. 51). He "should think" they were generally described in invoices as Botany laps or Botany waste, "either one or the other;" but, being asked whether these two terms were synony-

mous with "broken tops," he answered: "The word 'waste' would hardly be synonymous. By the word waste we, as a rule, in speaking of it in Bradford, allude more frequently to thread waste; that is more generally understood. In the trade, when we deal in laps, *we designate them as laps, not as waste; but more generally, when we speak of waste, we mean thread waste;*" nevertheless the witness allowed, as a "daresay," that laps might very often be invoiced as "Botany waste" (p. 53). "It is an article we have not had an opportunity of dealing in largely before the last two or three years" (p. 53). When broken tops are sold in England at all, it is because they have been broken up for exportation. It would not pay to do this for the home market (pp. 54–56). The terms "Botany waste, Botany laps, and broken tops" have been considered synonymous "perhaps two or three years" (p. 56).

These two are the Government witnesses on whom counsel now rely. Their testimony evidently concerns an article not known enough to be the subject of any commercial usage before 1887 or 1888, and then known as "laps," although it may be *invoiced* often as "waste," the invoices being drawn up to please the American importer, with his eye on the tariff laws. The testimony of the other Government witnesses is to the same effect. All the testimony prior to page 98 was taken in England and relates only to the local usages of trade in that country.

George W. Patton, the defendant below, testifying for himself, says that he thinks that there has been no distinction in commercial designation, whether the waste has been made intentionally or not, and says that tops

have been broken up for twenty years when for any reason they have become unfit for manufacturing fabric (p. 124). He had imported some "top waste," *probably* before 1883 (p. 123), whose commercial designation he states to have been "waste" (p. 126), though there was not much in the market, and therefore no market quotation (p. 127). This, however, may have been genuine waste, and perhaps no deliberately broken tops may have been imported prior to 1883 (pp. 131–132).

James Dobson testified boldly that the article was waste, according to commercial designation, since 1866 (p. 135), but finally admitted that he had never known deliberately broken tops to be exposed for sale here prior to 1888 (p. 140); and while he persisted in asserting that the genuine article had had a commercial designation as waste since 1866, he admitted that "the commercial designation of that article in a worsted mill has always been known as broken top" (p. 141); while he does not claim to be anything more than a manufacturer (p. 134). Prior to 1888 he had never known of broken tops being sold as a separate article (pp. 140–142).

Joseph P. Truitt admitted that he had never in his life bought or imported or known a bale of tops broken in pieces to be sold; he was always able to work his own top waste; never knew of a top being broken into pieces like these (p. 145); and the article which he had known for twenty-five years was the genuine top waste, and he had never known even this to be sold separately in the market prior to 1887 or 1888 (p. 146).

Rudolph C. Binder, a manufacturer, saw very little waste except what was made in his own mill, and had

never seen broken tops except the accidental article, which was mixed in with the other waste. He had never seen it separate before the trial (pp. 147–149). Like the witness in the Berbecker case, *supra*, he says: "I do not know what other people do; I only know what we do" (p. 149). His waste is dirtier and more greasy (p. 150).

Emile Scheppers had never seen the article in suit, and never heard of it till three to five years previously (p. 151); neither had *W. H. McCallum*, who testified that the usual practice was for each factory to use its own waste (p. 153).

Gustave Daws had never known it prior to 1887 (p. 154).

Charles J. Webb had imported a somewhat similar article before 1883, but not the same (p. 155). He had bought top waste separately about four or five years before the trial, or in 1886–87 (p. 156), and had never bought it unmixed "with a drawing-room waste" (p. 157).

M. H. Chadwick, a custom-house examiner in 1881–1885, called the article "sliver waste," and said it used to be imported generally mixed; sometimes the top waste was separate, but had never seen it broken by hand (pp. 158–159).

Sevil Scofield had never known of purchases of top waste separately (p. 161).

George Campbell said that the article, "or articles substantially similar," were commercially known as "top waste," and that for thirty years he had "known top waste composed wholly of pieces of top" (pp. 162–163); he had imported top waste for three or four years (p. 164); he presumed that it was an accidental product (p. 165).

James W. Tattersfield had dealt in waste in this country only since 1887, and had never known tops deliberately broken to be dealt in as an article of merchandise here (p. 167).

John J. Collins had only known "that article, or an article substantially similar," for about eight years (p. 168), or since 1883. He understood waste to be the "droppings from machinery," or "caused by the accidents in manufacturing" (pp. 168–169). Top waste, handled separately, was known in the trade as "broken tops; lap waste *some might call it*, or slubbing waste" (p. 169). He had known it to come from completed tops, torn up for bad color or imperfections (p. 170).

In brief, defendant's testimony amounted to this: That the "broken tops," first known in commerce as a separate article about 1887, were then generally considered to be "waste," because substantially similar to waste. In 1883 nothing was known in commerce but the genuine or accidental waste. While some say that "top waste" had been occasionally dealt in prior to 1883, yet it was generally conceded that it was the accidental article, which was more dirty and greasy than the article in suit and mixed with other substances. The name given by witnesses even to this article varies, as "sliver waste," "lap waste," "top waste," "roving waste." They all apparently testify simply as to local usages in Philadelphia, so far as their testimony refers to any usage, or anything beyond their individual opinions as to the most accurate phraseology.

It is respectfully submitted that this falls far below what is required to establish a presumption that Congress knew of and ratified a usage; that a verdict based on

such testimony would properly have been set aside; and therefore that a verdict in disregard of it was lawfully directed.

III.

The "broken tops" were not a manufacture of wool, and therefore they are simply "wool"; and having been scoured, are therefore classifiable as "scoured wool."

(*a*) The testimony to the effect that there are commercial designations which would exclude this article from the class of "scoured wool" and include it in the class of "manufactures of wool" is incompetent and must be disregarded. These are terms which the statute evidently uses descriptively and not denominatively, and which therefore do not belong to the class of terms which is subject to modification by commercial usages. Besides the large number of special articles included under each schedule of the tariff act, there are usually certain general clauses intended to cover all articles of the same general nature not specifically provided for, which clauses do not purport to give the names of the articles thereby covered, but a description sufficient to include them all, whatever their names may be. In some cases, if the meaning of these descriptive terms were to be narrowed, the schedules of the tariff act would fail to include some of the articles therein described, which would be thrown into the residuary clauses.

Among these descriptive clauses we may include "all coal-tar colors or dyes by whatever name known" (82); "all chemical compounds and salts" (92); "all nondutiable crude minerals" (95); "all earths or clays" (97); "all other earthen, stone, and crockery ware" (127); "min-

eral substances in a crude state and metals unwrought" (215); "manufactures, articles, or wares * * * composed wholly or in part of * * * metal" (216); "manufactures of wood" (233); "all manufactures of cotton" (324); "manufactures of flax, jute, or hemp, or of which flax, jute, or hemp shall be the component material of chief value" (334); "all goods, wares, and merchandise * * * made of silk, or of which silk is the component material of chief value" (383); "paper, manufactures of, or of which paper is a component material" (388); "all manufactures and articles of leather, or of which leather shall be a component part" (463).

Thus in *Marvel* v. *Merritt* (116 U. S., 11), discussing the phrase "mineral and bituminous substances in a crude state," Mr. Justice Matthews said:

> This is to be taken distributively, so as to cover all substances within the description, whether mineral or bituminous or both, and is not to be confined to those which combine both characters. The words used are not technical, either as having a special sense by commercial usage nor as having a scientific meaning different from their popular meaning. They are the words of common speech, and as such their interpretation is within the judicial knowledge, and therefore matter of law.

In *Newman* v. *Arthur* (109 U. S., 132, 138) the same learned justice had said, in speaking of the clauses of the statute relating to "manufactures of cotton:"

> There is no reference in the statute, either expressly or by implication, to the commercial usage, and there is no language in it which requires for its interpretation the aid of any extrinsic circumstances.

In *Magone* v. *Luckemeyer* (139 U. S., 612) in which case the Government attempted to make use of the doctrine of commercial designation—so that certain goods which are commercially known as all-wool, and which were actually 98 per cent wool (the cotton in them being discoverable only by chemical analysis, having been introduced simply to change the dutiable classification of the goods), should be classed as "wholly of wool"—this court sustained the following ruling of the trial judge (p. 614):

> He [defendant] further requested the court to charge that if the jury found that the goods were women's dress goods substantially composed of wool, and *known in trade and commerce as all-wool fabrics*, the defendant was entitled to a verdict. The court refused so to charge, and the defendant excepted. He also requested the court to charge that if the jury found that the quantity of cotton introduced into the goods was so insignificant as not to alter the character of the goods and remove them from the category of all-wool dress goods, *as known in trade and commerce*, the defendant was entitled to a verdict. The court refused so to charge, and the defendant excepted.

In *Magone* v. *Heller* (150 U. S., 70, 74), discussing the phrase "substances expressly used for manure," the court said:

> The agricultural use must prevail over the scientific or commercial nomenclature.

In *Cadwalader* v. *Zeh* (151 U. S., 171, 178), this court cites with approval previous cases arising under the phrase "manufactures composed wholly of cotton," and held that this "was a designation of articles by special

description of quality or material as contradistinguished from designation of commercial name."

In *Berbecker* v. *Robertson* (152 U. S., 373, 376), an attempt was made to bring imitation-gilt nails under the paragraph "Britannia ware and plated and gilt articles and wares of all kinds." The court said:

> We are not prepared to hold that under such circumstances this paragraph would be applicable, even if nails thus manipulated were commercially designated as "gilt nails."

The testimony that the "tops" were in fact, that is in ordinary English as distinguished from commercial dialects, manufactures of wool, is disposed of by the passage above quoted from *Cadwalader* v. *Zeh*.

These authorities dispose of the testimony to the effect that the goods in question were "manufactures of wool," and leave that question to be determined, not upon the testimony, but upon the facts judicially known to the trial court and likewise to this court.

(*b*) The article imported was concededly wool. It was also concededly wool that had been scoured. It was concededly to be used in the same manner as other scoured wool, although, by reason of the operations which it had gone through since it was scoured, it had lost some of its value. Even defendant himself admitted that the article imported would be manipulated in the same way with what he considered the scoured wool of commerce (p. 129). It had been through various early stages of manipulation, and had thus reached the stage of the "top," in which stage it was still wool, though formed into a ball for convenience, and altered somewhat in the

arrangement of the hairs. Even the "tops" did not come within the definition of a manufacture given by this court in *Lawrence* v. *Allen* (7 How., 785, 794), quoted in *Seeberger* v. *Castro* (153 U. S., 32, 35), in which case the question under consideration was whether an india rubber shoe was a manufacture; Mr. Justice Woodbury saying of the word "manufacture" that "in the more modern idea attached to the word it is making an article, either by hand or machinery, into a new form, capable of being used, and designed to be used, in ordinary life." The wool in the form of "tops" is analogous to the "round copper plates turned up and raised at the edges from four to five inches by the application of labor to fit them for subsequent use in the manufacture of copper vessels," which were held not to be manufactured copper in *United States* v. *Potts* (5 Cranch, 284); to the pressed hay, which was held not to be a manufactured article in *Frazee* v. *Moffitt* (20 Blatch., 267); to the marble cut into blocks for convenience of transportation, which were held not to be manufactured marble in *United States* v. *Wilson* (1 Hunt's Merchants' Magazine, 167); to the shells, cleaned by acid, ground by an emery wheel, and afterwards etched, which were held not to be manufactures of shells in *Hartranft* v. *Wiegmann* (121 U. S., 609), citing the above authorities; to the dental rubber, which seems to have been conceded not to have been a manufacture of rubber in *Junge* v. *Hedden* (146 U. S., 233).

It may be remarked that two years prior to the tariff of 1883, in a published decision, the Treasury Department ruled that tops were to be classified as wool and not

as manufactures of wool. (Syn. Dec., 4777.) These published decisions are precedents of which the court takes judicial notice, and which, as is well known, are the subject of careful investigation when each new tariff act is prepared. As Congress in 1883 failed to indicate any intention to change the classification of these "tops," but reenacted the previous provisions in a form substantially unchanged, there is a presumption of some force that it intended to adopt the departmental construction. (Opinions of Attorney General Garland, cited in *Earnshaw* v. *Cadwalader*, 145 U. S., 247, 257-258, and Attorney General Olney, 20 Op., 719, 721, applying the principle of *Metropolitan R. R. Co.* v. *Moore*, 121 U. S., 558, 572.)

The same result is attained by applying the rule of *noscitur a sociis*, the phraseology being "woolen cloths, woolen shawls, and all manufactures of wool of every description," etc., thus indicating that articles to be used by the consumer are intended.

When a tariff act intends an article which had been subjected to some process of manufacture to be classified at a different rate from that which governs it in its crude state, special provision to this effect is plainly made, as in paragraph 94, referring to barks, beans, berries, etc., which have been "advanced in value or condition by refining or grinding, or by other process of manufacture." (See also 95; and *United States* v. *Merck.*, 66 Fed. Rep., 251.) For other similar instances, we may note paragraph 179, using the phrases "wholly or partly finished," "wholly or partly manufactured," "without regard to the degree of manufacture;" paragraph 380, "silk par-

tially manufactured * * * and not further advanced or manufactured than carded or combed silk;" paragraph 381, "thrown silk in gum, not more advanced than singles," etc.; and the treaty provision discussed in *United States* v. *Hathaway* (4 Wall., 404).

But if the "tops" are not a manufacture, still less so is the semi-prepared wool after the tops are pulled to pieces.

(*c*) That the wool clauses of the act are not intended to be confined in their operation by any commercial usage to call certain forms of the article and no others "washed wool" or "scoured wool," as the case may be, is confirmed by examination of paragraph 356. That paragraph assumes that wool may possibly be imported in "other than ordinary condition" or "changed in its character or condition." If this is not one of the cases contemplated by that paragraph, it is difficult to imagine what kind of a change in condition is there referred to.

IV.

The wool was properly subjected to a double duty for violation of the provisions of paragraph 356.

The court, in directing a verdict, seems to have acted on the theory that the uncontradicted evidence shows the wool to have been imported in other than ordinary condition as practiced in 1883 and theretofore. This theory seems to be based upon undisputed evidence.

It is reenforced by the verdict of the jury upon the question submitted to the jury by stipulation of counsel; which special finding established the fact that this wool

was "changed in its character or condition for the purpose of evading the duty."

It is claimed that the jury were misled by the court in its charge that the ruling of the customs officials was presumptively correct, and the burden of proof was on the importers to overthrow it. This proposition rests upon the authority of such cases as *Arthur* v. *Unkart* (96 U. S., 118), *Herrman* v. *Robertson* (152 U. S., 523), and *Erhardt* v. *Schroeder* (155 U. S., 124). No exception to this general presumption has ever been established, or, so far as we know, suggested. Customs officials have to rule upon every variety of question, such as chemical composition, commercial or technical usage, and "chief use." They have not unfrequently to rule upon questions of intent. (*Tariff Act of 1883*, pars. 290, 429, 641, 642, 660, 662, 759, 771, 793, 815, 819.) It is not perceived why their ruling does not make a *prima facie* case in this as in other instances.

It is unnecessary, however, to consider this question, for two reasons: First, that the special finding is altogether unnecessary to a judgment in this case, the unusual character of this importation having been fully proved; and, second, because the court's remark as to the presumption in favor of the collector could not have prejudiced the importers. It was perfectly clear there was an intent to evade the tariff duty. The position of the importers at the trial evidently was that they had a right to evade it, under such cases as *Seeberger* v. *Farwell*, above referred to (*l. c. supra*); forgetting that paragraph 356 was plainly inserted to avoid the application of any such rule to the case of wool.

V.

This brief has been drawn on the assumption that the court directed a verdict, as we submit that he should have done.

It is not conceded, however, that his remark at page 172 was equivalent to such a direction. Having stated his recollection of the evidence, and charged that this entitled plaintiff to a verdict, he qualified by saying: "I do not take the case from you because it is submitted upon the evidence" (p. 172). This left it open to the jury to supply any defects in the recollection of the court. He has a right to tell the jury that he regards the evidence as convincing. (*Simmons* v. *United States*, 142 U. S., 148, 155 and cas. cit.) Hence the questions of fact were properly left to the jury, and by it decided.

It is respectfully submitted that the judgment should be affirmed.

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